146 U.S. 370

RECORD, CASE NO. 14977.

825

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 1018.

ALEXANDER LEWIS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

FILED FEBRUARY 15, 1892

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1 UNITED STATES OF AMERICA,
Western District of Arkansas:

In the circuit court, February term, A. D. 1891.

UNITED STATES
vs.
ALEXANDER LEWIS, JAMES JOHNSON. } Murder.

The grand jurors of the United States of America, duly selected, empaneled, sworn, and charged to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath, present:

That Alexander Lewis and James Johnson on the 15 day of June, A. D. 1888, at the Cherokee Nation, in the Indian country, within the western district of Arkansas aforesaid, with force and arms, in and upon the body of one Benjamin C. Tarver, a white man and not an Indian, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said Alexander Lewis and James Johnson with a certain gun then and there charged with gunpowder and one leaden bullet, which said gun they the said Alexander Lewis and James Johnson in their hands then and there had and held, then and there feloniously, wilfully, and of their malice aforethought, did discharge and shoot off, to, against, and upon the said Benjamin C. Tarver and that the said Alexander Lewis and James Johnson, with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said Alexander Lewis and James Johnson, discharged and shot off as aforesaid, then and there feloniously, wilfully, and of their malice aforethought, did strike, penetrate, and wound him, the said Benjamin C. Tarver, in and upon the left side of the head of him, the said Benjamin C. Tarver, giving to him, the said Benjamin C. Tarver, then and there, with
2 the leaden bullet aforesaid, so as aforesaid discharged and shot out of the gun aforesaid by the said Alexander Lewis and James Johnson in and upon the left side of the head of him the said Benjamin C. Tarver, one mortal wound of the depth of four inches and of the breadth of half an inch; of which said mortal wound he, the said Benjamin C. Tarver, then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Alexander Lewis and James Johnson, him the said Benjamin C. Tarver, in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

WM. H. H. CLAYTON,
United States Attorney, Western District of Arkansas.

No. 15. United States vs. Alexander Lewis, James Johnson. Murder. A true bill. Frank Pease, foreman. Witnesses: Willis P. Colton, Ft. Scott, Kansas; Harry M. Ryan, Sedalia, Mo.; Wallace H. Rasback, Parsons, Ks.; J. M. Bishop, Greenville, Texas; J. J. Keney, Sedalia, Mo.; Chas. Le Flor, Limestone Gap, Ind. Ter.; H. A. Thomas, Ardmore, I. T.; J. F. Hollman, Rogers Prairie, Leon Co., Texas; James B. Hustie, Catoosa, I. T. Filed Feb., 1891. S. Wheeler, clerk.

Chalot Tunler, Tulsa, I. T.; Alunnon B. Codding, St. Louis, Mo.; G. W. Harrison, near Gibson Station, near Verdegris Tank; Bud Kell, Muskogee, I. T.; J. B. Heady, Tallie, I. T.; R. J. Hollerman, Franklin, Texas; James Little, Coffeyville, south of, in Cherokee Nation; Joseph Cordell, Waco, Tex.; Wm. Mills, 5 miles west of Pryor Creek in I. T.; Hugh Hogan, Van Buren, Ark.; J. W. Sneed, Rosebud, Falls Co., Tex.; Jno. D. Tarver, Rosebud, Falls Co., Tex.; Clay Robert, Clavamore, I. T.; Jno. House, Alluwee, I. T.; W. B. Brewer, Tunland, I. T.

3 In the circuit court of the U. S. for the western district of Ark. February term, 1891. Friday morning, 9 o'clock, Feb. 6th, 1891.

Court met pursuant to adjournment. Present: The Hon. Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

UNITED STATES
vs.
ALEXANDER LEWIS. } Indictment for murder. No. 15.

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorney, and having had hearing of said indictment, and it being demanded of him concerning said indictment above specified and charged upon him how he would acquit himself thereof, he says he is not guilty as charged in said indictment and puts himself upon the country.

TUESDAY MORNING, *October* 20*th*, 1891.

(Caption omit'ed.)

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorneys, Mess. Barnes & Reed, and it appearing from the returns of the marshal that the said defendant has been served with a duly certified copy of the indictment in this cause and a full and complete list of the witnesses

4 in this cause, and that he has also been served with a full and complete list of the petit jury, as selected and drawn by the jury commissioners for the present term of this court, more than two entire days heretofore, and having heretofore had hearing of said indictment, and pleaded not guilty thereto, it is, on motion of the plaintiff by its attorney, ordered that a jury come to try the issue joined, whereupon the clerk called the entire panel of the petit jury, and, after challenge by both plaintiff and defendant, the following were selected for the trial of this cause:

Geo. A. Bryant, John W. Clayborn, Henry P. Dooly, James O. Eubanks, John A. Fisher, Henry P. Floyd, Geo. W. Hobbs, Hugh F. Mullen, Jno. D. McCleary, Obadiah C. Richmond, Joseph Stafford, Henry B.

Wheeler, twelve good and lawful men of the district aforesaid, duly selected, empaneled, and sworn to try the issue joined and a true verdict render according to the law and the evidence; and after hearing a portion of the evidence, and there not being time to further progress in the trial of this cause, they were put in charge of a sworn bailiff of this court.

* * * * * * *

MONDAY MORNING, *October 26th*, 1891.

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkans's, and come the said defendant, in custody of the marshal and by his attorneys, Mess. Barnes & Reed, and now come the jury heretofore empaneled for the trial of this cause, in charge of a sworn ba'liff of this court, to wit: (names omit'ed), who took their seats in the jury box, and, after receiving the charge of the court, retired to consider of their verdict, and after some time returned into court the following verdict, to wit:

"We, the jury, find the defendant guilty of murder as charged in the within indictment."

(Signed) GEO. A. BRYANT,
Foreman.

Whereupon the jury was by the court discharged from the further consideration of the case, and the said defendant remanded to the custody of the marshal to await final sentence.

SATURDAY, *Oct. 31st*, 1891.

On this day comes the said defendant by his attorney and files his motion to set aside the verdict of the jury, and for a new trial in this cause.

THURSDAY, *January 21st*, 1892.

On this day come on for final hearing the motion heretofore filed to set aside the verdict of the jury and for a new trial in this cause; and the court being well and sufficiently advised in the premises doth overrule said motion.

SATURDAY, *January 30th*, 1892.

On this day come the said defendant by his attorney and tenders his bill of exceptions and asks that it be signed, sealed, and made a part of the record in this cause, which is accordingly done.

And the defendant also files with the clerk his petition for writ of error with the assignment of errors attached.

It having come to the knowledge of the court that a writ of error has been issued by the clerk in the above-entitled cause, it is therefore hereby ordered that the execution of judgment be stayed pending the action of the Supreme Court.

6 *Bill of exceptions.*

In the circuit court of the United States for the western district of Arkansas, November term, A. D. 1891.

THE UNITED STATES, PLAINTIFF,
vs.
ALEXANDER LEWIS, DEFENDANT. } Murder.

Be it remembered that on the trial of the above-entitled cause the court directed two lists of thirty-seven qualified jurymen to be made out by the clerk, and one given to the district attorney and one to the counsel for the defendant; and the court further directed each side to proceed with its challenges independent of the other and without knowledge on the part of either as to what challenges had been made by the other.

To which method of proceeding in that regard defendant at the time excepted, but was required to proceed to make his challenges, and he challenged 20 persons from the list of 37 persons from which he made his challenges, but in doing so he challenged 3 jurors who were also challenged by the attorney for the Government, to wit, James H. Hamilton, Britton Upchurch, and James P. Mack. The Government, by its district attorney, challenged from the list of 37 jurors 5 persons. In making its challenges the same three persons as those challenged by the defendant, to wit, James H. Hamilton, Britton Upchurch, and James P. Mack, were challenged by the Government, as appears from the lists of jurors used by the Government in making its challenges and the defendant in making his challenges.

7 List of petit jurors summoned and in attendance at the August term, A. D. 1891, of the district and circuit courts of the United States for the western district of Arkansas, which was begun and held at Fort Smith, in said district, on the 5th day of October, 1891.

1. George A. Bryant (1).....Logan County.
D 1. [2. Joseph Bonner.....Fort Smith.]
D 2. [3. Thomas C. Bethel ..... Newton County.]
4. [John J. Bonner .....Sebastian "]
D 3. [5. Alonzo Bouton.....Fort Smith.]
6. John W. Clayborn (2).....Newton County.
7. Henry P. Dooly (3).....Sebastian "
D 4. [8. Linley M. Deering..... Sebastian] "
D 5. [9. Joseph A. Duncan .....Madison] "
[10. Frank W. Dunn.....Sebastian "]
11. James O. Eubanks (4) ..... Franklin "
D 6. [12. John Fishero .....Sebastian] "
13. John A. Fisher (5).....Carroll "
14. Henry P. Floyd (6) .....Polk "
15. William C. Gentry.....Crawford "
D 7. [16. Francis M. Graham.....Sebastian] "
D 8. [17. James H. Hamilton.....Fort Smith.]
18. Alford P. Holt.....Washington County.
19. George W. Hobbs (7).....Washington "
[20. Agrippa T. Hopkins.....Sebastian "]

D 9. [21. Mack McKinney ....Fort Smith.]
D 10. [22. Samuel T. McMasters .....Sebastian County.]
23. Hugh F. Mullen (8).....Franklin "
[24. Osborn McCall ....Scott "]
25. John D. McCleary (9) ....Franklin "
D 11. [26. Charles Nichols..... .....Yell "]
D 12 [27. John Paterson..... .....Fort Smith.]
[28. Henry K. Phillips ....Newton County.]
29. Obadiah C. Richmond (10) .....Scott "
D 13. [30. Porter A. Savage] .....Fort Smith.
31. Joseph Stafford (11) .....Washington County.
D 14. [32. Britton Upchurch]..... .....Sebastian "
D 15. 33. Daniel W. Weld..... .....Montgomery "
34. Henry B. Wheeler (12) ....Washington "
35. John F. Williams..... .....Madison "
36. John Williams, sr..... .....Madison "
D 16. [37. Robert Whiting] .....Fort Smith.

ALTERNATES.

D 17. [1. Jas. P. Mack]..... ....Fort Smith.
D 18. [2. Frank Freer].. .... "
3. Henry T. Burdick .... "
D 19. [4. B. J. Griffin] ..... "
D 20. [5. Henry Williams]..... ..... "

NOTE.—Parts in brackets are erased in ink.

UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stephen Wheeler, clerk of district and circuit courts of the United States for the western district of Arkansas, do hereby certify that the foregoing is a true and correct list of the petit jurors summoned and in attendance at the August term, A. D. 1891, of said court.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Fort Smith, in said district, this ——— day of October, A. D. 1891.

——— ———, *Clerk*,
By ——— ———, *D. C.*

8 *Alexander Lewis. Murder, Oct. 20th.*

List of petit jurors summoned and in attendance at the August term, A. D. 1891, of the district and circuit courts of the United States for the western district of Arkansas, which was begun and held at Fort Smith, in said district, on the 5th day of October, 1891.

1. George A. Bryant ....Logan County.
2. Joseph Bonner.....Fort Smith.
3. Thomas C. Bethel ..... Newton County.
4. [John J. Bonner ....Sebastian "]
5. Alonzo Bouton . . ..Fort Smith.

6. John W. Clayborn ..... Newton County.
7. Henry P. Dooly ..... Sebastian "
8. Linley M. Deering ..... Sebastian "
9. Joseph A. Duncan ..... Madison "
[10. Frank W. Dunn ..... Sebastian "]
11. James O. Eubanks ..... Franklin "
12. John Fishero ..... Sebastian "]
13. John A. Fisher ..... Carroll "
14. Henry P. Floyd ..... Polk "
15. [William C. Gentry ..... Crawford "] G.
16. Francis M. Graham ..... Sebastian "
17. [James H. Hamilton ..... Fort Smith] G.
18. [Alford P. Holt ..... Washington County] G.
19. George W. Hobbs ..... Washington "
[20. Agrippa T. Hopkins ..... Sebastian "]
21. Mack McKinney ..... Fort Smith.
22. Samuel T. McMasters ..... Sebastian County.
23. Hugh F. Mullen ..... Franklin "
[24. Osborn McCall ..... Scott "]
25. John D. McCleary ..... Franklin "
26. Charles Nichols ..... Yell "
27. John Paterson ..... Fort Smith.
[28. Henry K. Phillips ..... Newton County.]
29. Obadiah C. Richmond ..... Scott "
30. Porter A. Savage ..... Fort Smith.
31. Joseph Stafford ..... Washington County.
32. [Britton Upchurch ..... Sebastian "]
33. Daniel W. Weld ..... Montgomery "
34. Henry B. Wheeler ..... Washington "
35. John F. Williams ..... Madison "
36. John Williams, sr ..... Madison "
37. Robert Whiting ..... Fort Smith.

ALTERNATES.

1. [Jas. P. Mack ..... Fort Smith.]
2. Frank Freer ..... "
3. Henry T. Burdick ..... "
4. B. J. Griffin ..... "
5. Henry Williams ..... "

NOTE.—Parts in brackets are erased in ink.

UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stephen Wheeler, clerk of district and circuit courts of the United States for the western district of Arkansas, do hereby certify that the foregoing is a true and correct list of the petit jurors summoned and in attendance at the August term, A. D. 1891, of said court.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Fort Smith, in said district, this ——— day of October, A. D. 1891.

——— ———, *Clerk*,
By ——— ———, *D. C.*

9 The twelve persons who were left of the panel of 37, after both sides had made their respective challenges, were the ones selected to try and who did try the case.

To the happening of the fact that both parties challenged the same three jurors, the defendant at the time objected, but the court overruled the objection and directed the jury to be called from the said two lists empaneled and sworn, to which the defendant at the time excepted.

Thereupon the Government, to maintain the issues upon its part, produced and examined the following-named witnesses, to wit:

John D. Tarver, James W. Sneed, W. P. White, A. B. Codding, Willis P. Colton, Harry Ryan, Wallace H. Rasbach, I. N. Bishop, G. W. Harrison, and J. T. Holleman, the last-named witness who was shown to be under indictment in this court for the same crime as defendant was on trial for, at the time he was used as a witness against defendant, but to the introduction of whose testimony at the time defendant made no objection.

The indictment was filed August 31st, 1888, and is as follows, to wit:

10 UNITED STATES OF AMERICA,
Western District of Arkansas:

In the district court, August term, A. D. 1888.

UNITED STATES *vs.* KELP QUEEN, WILLIAM WHITLEY, JOE FOSTER, Sam Holloway, John Barber, Stephens Jim alias Johnson, A. S. Lewis, William A. Dawson, Oscar Coulter, John Dustin, and Tobe Dustin.	Murder.

The grand jurors of the United States of America, duly selected, empaneled, sworn, and charged, to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath present:

That Kelp Queen, William Whitley, Joe Foster, Samuel Holloway, John Barber, Stephens Jim alias Johnson, A. S. Lewis, whose full name is to said grand jurors unknown, William A. Dawson, Oscar Coulter, John Dustin, and Tobe Dustin, on the 16th day of June, A. D. 1888, at the Creek Nation, in the Indian country, within the western district of Arkansas aforesaid, with force and arms, in and upon the body of one Tarver, whose Christian name is to said grand jurors unknown, a white man and not an Indian, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said Kelp Queen, William Whitley, Joe Foster, Samuel Holloway, John Barber, Stephens Jim alias Johnson, A. S. Lewis, William A. Dawson, Oscar Coulter, John Dustin, and Tobe Dustin, with a certain gun then and there charged with gunpowder and one leaden bullet, which said gun they, the said Kelp Queen, William Whitley, Joe Foster, Samuel Holloway, John Barber, Stephens Jim alias Johnson, A. S. Lewis, William A. Dawson, Oscar Coulter, John Dustin, and Tobe Dustin, in their hands then and there had and held, then and there feloniously, wilfully, and of their malice aforethought, did discharge and shoot off, to, against, and upon the said Tarver, whose Christian name is to said jurors unknown; and that the said Kelp Queen, William Whitley, Joe Foster, Samuel Holloway, John

Barber, Stephens Jim alias Johnson, A. S. Lewis, William A. Dawson, Oscar Coulter, John Dustin, and Tobe Dustin, with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said Kelp Queen, William Whitley, Joe Foster, Samuel Holloway, John Barber, Stephens Jim alias Johnson, A. S. Lewis, William A. Dawson, Oscar Coulter, John Dustin, and Tobe Dustin, discharged and shot off as aforesaid, then and there feloniously, wilfully, and of their malice aforethought, did strike, penetrate, and wound him the said Tarver, whose Christian name is to said grand jurors unknown, in and upon the head, breast, back, and belly of his, the said Tarver, giving to him, the said Tarver, then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the gun aforesaid by the
11 said Kelp Queen, William Whitley, Joe Foster, Samuel Holloway, John Barber, Stephens Jim alias Johnson, A. S. Lewis, William A. Dawson, Oscar Coulter, John Dustin, and Tobe Dustin, in and upon the head, breast, back, & belly of him, the said Tarver, one mortal wound of the depth of four inches and of the breadth of half an inch; of which said mortal wound he, the said Tarver, whose Christian name is to said grand jurors unknown, then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Kelp Queen, William Whitley, Joe Foster, Samuel Holloway, John Barber, Stephens Jim alias Johnson, A. S. Lewis, William A. Dawson, Oscar Coulter, John Dustin, and Tobe Dustin, him, the said Tarver, whose Christian name is to said grand jurors unknown, in the manner and by the means aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

M. H. SANDELS,
United States Attorney, Western District of Arkansas.

No. 2622. United States vs. Kelp Queen, Wm. Whitley, Joe Foster, Sam Holloway, John Barber, Stephens Jim, A. S. Lewis, Wm. A. Dawson, Oscar Coulter, John Dustin, and Tobe Dustin. A true bill. F. M. Neal, foreman. Witnesses, James Martin, Bernice Cox, J. G. East, Chas. La Flore, Sholly Gunter, John Elliott, Heck Thomas, Jim House, John Lewis, Robt. Marshall.

Filed Aug. 31, 1888. Stephen Wheeler, clerk.

12 James B. Hasty, J. E. House, Clay Robbins, Chola Gunter, Bud Kell, Joe Cordelle, Charlie LeFlore, W. R. Mills, Charlie LeFlore (recalled), Bud Heady, W. B. Brewer, and James Little, who testified respectively as follows:

13 In the circuit court of the United States, within and for the western district of Arkansas, November term, A. D. 1891.

UNITED STATES
vs.
ALEXANDER LEWIS. } Murder.

Testimony before his honor, Isaac C. Parker, and a jury. Appearances: For the Government, Hon. William H. H. Clayton, dist. att'y; for the defendant, Messrs. Thos. H. Barnes and William M. Cravens.

14 JOHN D. TARVER, having been duly sworn, was called upon the part of the Government, and being examined by the district attorney testified as follows, to wit:

Question. What is your name?

Answer. John D. Tarver.

Q. Where do you live?

A. I live at Rosebud, Falls County, Texas.

Q. Do you know the defendant, Alexander Lewis?

A. No, sir; I don't.

Q. Did you know a man by the name of Benjamin C. Tarver in his lifes time?

A. Yes, sir.

Q. Where did you know him?

A. I knew him at home; we were brothers.

Q. He was a brother of yours?

A. Yes, sir.

Q. How old a man was he?

A. Thirty-two years old.

Q. Was he a married or single man?

A. Single man.

Q. Is he alive or dead?

A. He is dead.

Q. Did you see him when he was dead?

A. Yes, sir.

Q. Where did you see him?

A. I saw him at home.

Q. Was he sent home when he was killed?

A. Yes, sir.

Q. Did you see the wounds upon him?

A. Yes, sir. I noticed a wound in his hand and side of his head. I don't remember for certain which hand the wound was; I think it was through the left hand; I am not positive about it, though. The other wound I noticed was in the left side of his head, below his ear to the best of my recollection about it.

Q. Now, then, when did you last see your brother Benjamin C.

15 Tarver alive?

A. It was before he started to Chicago with Mr. Sneed.

Q. How long had he been gone away from home?

A. I don't remember for certain; something near two weeks, or a week and a half. I don't remember the day he left.

Q. What did he go to Chicago for?

A. He went with Mr. Sneed more on a pleasure trip than anything else.

Q. What did Mr. Sneed go for?

A. Mr. Sneed carried beef cattle.

Q. Did he help Mr. Sneed with the cattle, do you know?

A. Yes, sir.

Q. You don't know particularly what he went to Chicago for?

A. No, sir.

Q. You say your brother was not a married man?

A. No, sir.

Q. Was he about to be married, do you know?

A. Yes, sir; he was engaged to be married.
Q. When was he going to be married?
A. I don't know what time; but soon, I think.
Q. Was he a white man or Indian?
A. White man.
Q. You saw him after he returned, and you know it was your brother who was killed?
A. Yes, sir.
Q. Do you know who brought him home?
A. He was sent home by express; I received him at Marlin myself.

Cross-examination by Mr. BARNES:

Q. You say it was your brother?
A. Yes, sir.
Q. You say you live in Falls County, Texas?
A. Yes, sir.
16 Q. Did your brother ever go by the name of Martin?
A. No, sir.
Q. Never went by any other name?
A. No, sir; he did not.

Redirect examination by the DISTRICT ATT'Y:

Q. Do you remember when it was that he got home?
A. Yes, sir.
Q. When?
A. It was on Sunday after the 15th; the 15th was on Friday, Saturday 16th—it would be the 17th.
The COURT. 17th of June?
A. Yes, sir.
The DISTRICT ATTORNEY. On Sunday the 17th day of June, 1888?
A. Yes, sir.

Recross-examination:

By Mr. BARNES. Why do you say on Sunday after the 15th?
A. I remember that date.
The DISTRICT ATTORNEY. That is the date, I suppose, you understood he was killed?
A. Yes, sir; I received a dispatch he was killed on that day.
Mr. BARNES. There was a dispatch informed you he was killed on the 15th?
A. Yes, sir.
Q. That is what you mention the 15th in connection with the 17th, after the 15th which you say was on Friday?
A. Yes, sir.
The COURT. Have you got the dispatch with you?
A. No, sir.

17 JAMES W. SNEED, having been duly sworn, was then called upon behalf of the Government, and being examined by the district attorney, testified as follows, to wit:

Question. What is your name?
Answer. James W. Sneed.

Q. Where do you live?
A. Falls County, Texas.
Q. Please state if you knew Benjamin C. Tarver in his lifetime.
A. Yes, sir.
Q. That was his full name, was it?
A. Yes, sir.
Q. Getting at this short, please state if upon the trip he was killed you were along?
A. Yes, sir; I was.
Q. Where did you go?
A. To Chicago, with cattle.
Q. Whose cattle?
A. Mine.
Q. What was his business?
A. He went with me.
Q. To help?
A. Yes, sir.
Q. I do not care anything about your trip there nor your trip back; I suppose you went there and disposed of your cattle and returned, did you not?
A. Yes, sir.
Q. Were you present when Benjamin C. Tarver was killed?
A. Yes, sir.
Q. Where was it that he was killed?
A. It was on the Verdigris, in the Indian Territory.
Q. State all you know about it.
A. Well, sir; I was there asleep, and the noise woke me up. I was laying on a seat of the car asleep.
Q. You were on your way home on the M. K. & T. Railroad?
A. Yes, sir. When I woke up I just asked what was the matter, and some of them said they were shooting in the car, and told me
18 I had better go down or I might get killed; that they had killed these two men there.
Q. You had arose, I suppose?
A. Yes, sir.
Q. That they had killed these two men there; what two men?
A. I suppose he meant Terver and the newsboy; he was hollering.
Q. Who was holloing?
A. The newsboy.
Q. What was Tarver doing?
A. He was just laying down on the floor.
Q. Now, then, what occurred after that?
A. We carried him on to Muskogee.
Q. How long did you remain there after that?
A. I could not tell you how long we were there; we were there some little time; I don't know how long.
Q. That is, after the killing?
A. Yes, sir.
Q. Tarver was lying there dead, and the newsboy was holloing. What was the matter with the newsboy?
A. He was shot.

Q. Where?
A. In the arm.
Q. Do you know which arm?
A. No, sir; I don't. I didn't pay but little attention to it as to which arm it was; I just simply heard him say he was shot.
Q. What was the matter with Mr. Tarver?
A. He was shot.
Q. Alive or dead?
A. Dead.
Q. Tarver was dead when you saw him first?
A. Yes, sir.
Q. Where was he shot?
Q. In the left side of the head; just under the left ear, and it came out a little above the ear, I think, on the right side; and then he was shot through the center of the left hand.
Q. What did you do with him?
19 A. I carried him to Muscogee and got a coffin there and dressed him and carried him as far as Denison, Texas.
Q. Than what did you do?
A. Left him there in the hands of an undertaker to be embalmed; decomposition had set in and they would not receive the dead body on the Central Railroad, and I left him in the hands of an undertaker to be embalmed, to send him by express to Marlin.
Q. About how far is it from his home to Denison?
A. I do not know the exact distance; it is 150 miles to Dallas, and I believe about 74 up to Denison; I am not positive about the distance.
Q. Please state if Mr. White was along with you.
A. Yes, sir.
Q. Had he taken cattle along with you, too?
A. Yes, sir.
Q. What was the man's name who was killed?
A. Benjamin C. Tarver.
Q. Did he ever go by any other name?
A. None that I ever heard of.
Q. Did you ever hear of him going by the name of Martin?
A. No, sir; I never heard him called by any other name than Benjamin C. Tarver.
Q. When did this shooting there on the Verdigris occur?
A. On Friday night, 15th day of June, 1888.
Q. That's all you know about it; you were asleep, and of course don't know what happened?
A. Yes, sir.
Q. After you found the dead body was there, I suppose you do not know what happened on the outside?
A. No, sir.
Q. Did you hear any shot that you recognized as a shot?
A. No, sir; I didn't hear any shooting; I suppose that the shots
20 woke me up, but I could not distinguish any shots.
Q. It was on a passenger car this shooting occurred?
A. Yes, sir.

Cross-examination by Mr. BARNES:

Q. Do you know what time of night it was that the train was robbed and the killing occurred?

A. No, sir; I don't.

Q. It was after dark, was it not?

A. Yes, sir.

It having arrived at the hour of 6:00 o'clock p. m., court here adjourned until Wednesday morning, October 21st, A. D. 1891.

21 WEDNESDAY MORNING,
October 21st, A. D. 1891—9:00 o'clock.

W. P. WHITE, having first been duly sworn on behalf of the Government, was called, and upon being examined by the district attorney testified as follows, to wit:

Question. What is your name?

Answer. William Perry White.

Q. Where do you live?

A. I live in Texas, Milan County.

Q. Did you know Benjamin C. Tarver in his lifetime?

A. Yes, sir.

Q. That was his name, was it?

A. Yes, sir.

Q. How far did you live from him?

A. At one time I lived in about a mile of him, maybe a little over.

Q. Please state if you went to Chicago with him and Mr. Sneed.

A. Yes, sir.

Q. Did you go on the same train?

A. Yes, sir; we went on the same train part of the way; that is, we didn't start together, but we got together, and went then on all the way together after I got with them.

Q. You came back with them?

A. Yes, sir.

Q. Do you know the defendant?

A. No, sir.

Q. The defendant is charged, in connection with a number of other men, train robbers, with the murder of Benjamin C. Tarver. Please state whether Mr. Tarver is dead or alive.

A. He is dead.

Q. Were you present when he was killed?

A. Yes, sir; I was.

Q. Where were you going?

22 A. We were returning home from Chicago.

Q. That is, yourself, Mr. Sneed, and Mr. Tarver?

A. Yes, sir.

Q. Were you all traveling together?

A. Yes, sir.

Q. In the same car?

A. Yes, sir.

Q. You may state now all you know about the killing of Mr. Tarver.

A. At the Verdigris bridge the train was stopped; Mr. Tarver got up and walked out, him and the newsboy, and when he came back he was talking to me and was shot down.

Q. He was talking to you when he came back?

A. Yes, sir.

Q. Were you standing or sitting?

A. I was setting down.

Q. Sitting in a seat of the car?

A. Yes, sir.

Q. Upon which side of the car?

A. Upon the west side.

Q. The car was going south?

A. Yes, sir.

Q. You were on the right-hand side of the car?

A. Yes, sir.

Q. You were sitting on a seat; where was Mr. Tarver?

A. He was standing right at the end of the front seat talking to me.

Q. Front seat in the car?

A. Yes, sir.

Q. Were you on the front seat?

A. I was on the second seat from the front; he was standing at the end of the front seat talking to me.

Q. State whether the windows were up or down?

A. The window was up next to me where I was setting.

Q. He was talking to you, then, when he was shot?

A. Yes, sir.

Q. Had you heard any shots before he was shot?

A. Yes, sir; I had heard one on the outside.

Q. How long before?

A. I don't know exactly.

Q. In what direction was it?

A. Seemed to be down towards the engine.

23 Q. Now, then, when Mr. Tarver was shot did you hear any other shot—how many shots did you hear?

A. There seemed to be two.

Q. Close together or far apart?

A. Right close together.

Q. If I understand you then, before Mr. Tarver was shot you heard one shot which appeared to be down towards the engine, in that direction, and then two shots were fired, and Mr. Tarver fell?

A. Yes, sir.

Q. Which of the two last shots that were fired struck Mr. Tarver?

A. The first one.

Q. Then that would be the second shot that was fired that he was shot?

A. Yes, sir.

Q. Did Mr. Tarver fall?

A. Yes, sir.

Q. Was there anybody else shot in your car?

A. The newsboy was shot.

Q. Where was he?

A. I thought he was behind Mr. Tarver, but he says not.

Q. What did the newsboy do and say at the time he was shot, if anything?

A. Well, he wanted somebody to do something for him, that he was shot.

Q. Pretty badly alarmed?

A. Yes, sir; seemed to be pretty badly scared.

Q. Do you know his name?

A. No, sir.

Q. When Mr. Tarver was shot please state if he said anything?

A. Well, he just sort of drew in a breath, just sort of groaned, it seemed to me; didn't say anything.

Q. Did not speak?

A. No, sir.

Q. Can you tell about how long he lived?

A. He seemed to be dead when he struck the floor. He did not
24 move after he got on the floor as I could tell anything about.

Q. Where was he shot?

A. In behind the left ear, and came out at the edge of the other ear.

Q. Anywhere else?

A. Through the left hand.

Q. State, if you can, how he received one through the hand and head. What was he doing just at the time?

A. He was wiping the sweat, it seems like, from off of his forehead.

Q. You were sitting on the right-hand side of the car going south?

A. Yes, sir.

Q. On one of the benches or seats of the car?

A. Yes, sir.

Q. In front of you, at the end of the seat in front of you, this end seat, he was standing; which way was he facing?

A. Facing me.

Q. That would turn his left side to the right side of the car, would it not?

A. Yes, sir.

Mr. BARNES (of counsel for defendant). Please let the witness fix the points of the compass.

The DISTRICT ATTORNEY. You state that Tarver was standing at the end of this seat in front of you, facing you?

A. Yes, sir.

Q. That would throw his left side how?

A. Next to the window.

Q. Next to the window on the right side of the car?

A. Yes, sir.

Q. Which window was up; the one opposite your seat, or the one opposite the seat he was standing at?

A. The one opposite my seat.

Q. Do you remember what he was saying when he was shot—what you were talking about?

A. I don't remember.

25 Q. What did you do immediately after Tarver and the newsboy were shot?

A. I tumbled off right down on the floor.

Q. Why?
A. I didn't know but what my time was coming next.
Q. Was there any more shooting after that?
A. None that I heard.
Q. Did you hear any talk on the outside of the train?
A. None that I remember of.
Q. What became of the newsboy?
A. He went on down to Muskogee.
Q. I mean immediately after he was shot?
A. They poured water on his wound there and fixed it up there.
Q. While they were still there or after they left?
A. While they were still there.
Q. Who poured water on the wound; do you remember?
A. I don't know; there was a good many people around there.
Q. How long did you remain there after the shooting of Mr. Tarver?
A. I don't know, sir, how long, but suppose we staid there altogether about fifteen or twenty minutes.
Q. That was at the place of the shooting?
A. Yes, sir; at Verdigris.
Q. Then you went on down to Muskogee?
A. Yes, sir.
Q. Did you take Mr. Tarver with you?
A. Yes, sir.
Q. He was dead?
A. Yes, sir.
Q. Did you see anything of these parties on the outside who did the shooting?
A. No, sir.
Q. Please state if there was any place in the side of the car that was shot through; if you observed whether there was any or not where you were sitting?
A. In my window?
26 Q. Yes, sir.
A. No, sir.
Q. The window was up?
A. Yes, sir.
Q. The glass of the window was not broken or anything about the car that would show where the ball came that struck Mr. Tarver?
A. No, sir.
Q. Do you know whether the car door was open or shut?
A. It was open.
Q. In what position was Mr. Tarver standing as to the door?
A. With his back to the door.
Q. That is, at the time he was shot?
A. Yes, sir.
Q. Could he have been shot from the door, being shot where he was?
A. No, sir; I don't think he could.
Q. Was there anything else in around about that killing that you observed?
A. No, sir.

Q. I will ask you if Mr. Tarver was shot by a man from the inside or the outside of the car?

A. From the outside.

Q. How do you know that?

A. Because the report seemed to be on the outside.

Q. At the time he was shot, or just immediately before the shooting, was there anybody gave him any warning, or said anything, or was he just shot down there silently and quietly?

A. No, sir; there was no warning.

Q. Nothing said?

A. No, sir; not that I know of.

Q. How long had you known Mr. Tarver?

A. I don't know exactly; I had known him for sometime.

Q. Do you remember the day of the month this shooting of Mr. Tarver occur'ed?

A. About the 14th or 15th—15th, I think.

Q. On the 15th of the month?

A. Yes, sir.

Q. Of what month?

A. June.

27 Q. Last June?

A. No; June, 1888.

Q. You say this occurred at the Verdigris; in what nation?

A. I don't know, sir; I am not acquainted with the nations.

Q. On what railroad?

A. On the M., K. & T.

Q. Go on now and state what you did with the body?

A. We carried it on to Muscogee, and there we had to stay all night, and from there to Denison, and from Denison it was sent home.

Q. Do you know how it was sent from Denison?

A. Mr. Sneed had it sent home from Denison.

Q. That is all you know about this matter, is it?

A. Yes, sir.

Cross-examination by Mr. BARNES:

Q. It was after dark when this killing occurred?

A. Yes, sir; about 8 or 9:00 o'clock, I suppose; somewheres about that.

28 A. B. CODDING, having been duly sworn on behalf of the Government, was called, and, being examined by the district attorney, testified as follows, to wit:

Question. State your name.

Answer. A. B. Codding.

Q. What was your business in 1888?

A. Express messenger.

Q. What road?

A. In the employ of the Pacific Express Co., on the M., K. & T. road.

Q. You were an express messenger on the M., K. & T.?

A. Yes, sir.

Q. Were you on the train that was robbed at Verdigris, in June, 1888?

A. Yes, sir; June 15th.
Q. Were you express messenger at that time?
A. Yes, sir.
Q. I will get you to state what you know about this matter, commencing at Ft. Gibson, if you know anything about things that transpired there?
A. I don't know anything that transpired there; I know that we stopped at the Verdigris River——
Q. You came on down, going south?
A. Yes, sir; we stopped to let the tank repairer off there—he had previously told me he was going to stop there.
Q. Was he on the train?
A. Yes, sir.
Q. What was his name?
A. Bishop.
Q. He had told you he was going to get off there, had he?
A. Yes, sir.
Q. Go ahead.
A. And we stopped at the river, and I heard a shot.
Q. Where did you hear that shot; in what direction?
A. I could not state; I was back in the car at work.
29 Q. What car were you in?
A. Express car; the second car from the engine.
Q. Which was the first car?
A. The mail car.
Q. First was the engine and then the tender?
A. Yes, sir.
Q. What car next?
A. United States mail car.
Q. The second car from the tender was the Pacific express car, and you were on that?
A. Yes, sir.
Q. What was the next car?
A. Baggage.
Q. What was the next car?
A. Second-class car, or smoker.
Q. Do you know the car in which Mr. Tarver was killed?
A. I know the car he was brought into Muskogee in?
Q. What car was that?
A. Smoking car.
Q. That was the fourth car from the engine, not counting the tender?
A. Yes, sir.
Q. You were in the express—that is, the second car from the engine?
A. Yes, sir.
Q. You say you heard a shot. You don't know what direction it was in, as you were in the car?
A. Yes, sir.
Q. What did you do when you heard the shot?
A. I got up and went to the door and hollered.
Q. Went to what door?
A. Side door on the east side.
Q. The train was going south, you say?

A. Yes, sir.
Q. That would make it on the left side of the train as you go south?
A. Yes, sir.
Q. You went to the door and holloed?
A. Yes, sir.
Q. What did you say, do you remember?
A. I hollored "Whopee!"
Q. Did you know at that time there were robbers there or anything of the kind?
A. No, sir.
30 Q. Why did you hollo?
A. I supposed that some drunk man was shooting back on the train.
Q. Then what occur'ed?
A. I went back and set down in my chair and went to writing.
Q. Then what?
A. I heard some talking outside, somebody wanted to know where the express car was, which was the express car; I jumped up and went to the door——
Q. What did he say?
A. Where in hell is that express car.
Q. Then what did you do?
A. I went to the door and somebody threw a gun up to my face.
Q. When you went to the door what position did you take?
A. I just walked right up to the door.
Q. Then what occur'ed?
A. I started to look out and a fellow threw a gun up in my face and told me to go back in there or he would blow my head off, and cussed a little.
Q. Go ahead?
A. I got back, jumped back in the car, blowed out one light as I went back.
Q. What did he say when he told you to go back?
A. He called me a son-of-a-bitch—he said, "Get back, you damned son-of-a-bitch, or I will blow your head off."
Q. And you got back?
A. Yes, sir.
Q. Then what?
A. And I stepped back, I grabbed a little pistol I had, and jumped back in the front end of the car, and presently I heard some one say, "Pard, for God's sake, don't shoot," and I heard them scrambling into the car door, and presently I saw Jenks, the mail clerk on the train come in. I didn't know his name at that time; knew he was the mail clerk, one of these men behind him with his arm up over his shoulder this
31 way, pointing a gun at him.
Q. Saw him come where?
A. In the side door of my car, the door I had looked out.
Q. You saw who come in?
A. Jenks, the mail clerk—I am not positive that is his name; I think though it is.
Q. Jencks was standing in the door with one of the men behind him? he had his gun up over Jenks's shoulder standing in the door of your car?

A. Yes, sir.
Q. Did you know that man?
A. No, sir.
Q. When you say "gun" you mean pistol, or revolver, I suppose?
A. Yes, sir.
Q. Go ahead?
A. He told me to throw up my hands.
Q. Who did that?
A. This man who came in behind Janks.
Q. What did you do?
A. I throwed up my hands. He asked me where my safe was. He said he was Captain somebody, and a damned bad man.
Q. Captain what?
A. It was either Capt. Jack, or Capt. Buck, I am not positive which.
Q. What did you tell him about the safe?
A. He said he did not want any boy-play. I told him I didn't have any safe, and he hit the local safe with his foot, and said, "What is that?" I said, "That is my safe," and he told me to open it up and be damned quick about it, and I opened the safe up.
Q. Which safe did he kick?
A. My local safe, a small safe, and I handed things out to him. He asked me what I had; I called off an amount to him, I don't remember exactly what I called to him; I exaggerated the amount.
Q. To about how much?
A. Made it couple of thousand dollars.
32 Q. You opened the safe and handed him out the packages, and when he asked how much it was you called the amount to be some two thousand dollars?
A. Yes, sir.
Q. How much was there?
A. There was $8.75; there were three or four different packages.
Q. Anything else?
A. And one valuable package.
Q. You don't know what that was?
A. No, sir.
Q. Have you learned since?
A. I have learned since that it contained a lady's gold watch; old-fashioned watch.
Q. Have you seen the watch since?
A. No, sir. He asked me if that was all, and I says, "Yes, sir;" and he says, "Let me see your books," and I told him that we did not carry books, and he said it was funny, and I said we carried way-bills; he said, "Let's see your way-bills," and I opened up my portfolio and showed him a bunch of way-bills. He says, "That calls for more than this." I said, "The rest is in the through safe," and pointed to the safe. He says, "Open that." I says, "I can't." Well, he says—he studied about 30 seconds, and he says, "Open that safe," and I says, "I can't." And he put a gun right to my head——
Q. Did he have a pistol in each hand?
A. Yes, sir; the money I had given him in one hand this way, and a lot of blank stationery he had picked up in his arm this way. When he

told me to open the safe he put one of his pistols right here (indicating) and the other here (indicating). In the meantime there was another man in the car; I forgot to state that. He told me if the safe was'nt opened in 30 seconds I was a dead man. I told him I guessed I would have to die.

Q. Who was that other man in the car?

33 A. There was a messenger riding from Sedalia to Denison with me in the car; and a man came up behind this man in the car and guarded this mail clerk; kept him there while this was going on.

Q. What was this other messenger doing?

A. He was sleeping back in the north end of the car.

Q. Go ahead. He told me to open the safe, or in 30 seconds I would be a dead man. I told him I could not open the safe, and he said——

Q. Did you tell him why?

A. I explained it to him; told him it was a combination and key lock, key on the outside, combination on the inside; I hadn't the key and didn't know the combination; told him it was only known at stations along the road, certain stations. Well, he stood there probably a minute, and said, "Come out of here." I thought they were going to burn the car, and I told him there was a man in the other end of the car asleep, and he turned around and covered him and told him to get up and get out; took us out of the side door of the car, along by the engine, up by the front of the engine, and when we got to the front end of the engine there was a man came up out of the woods this side of the track with two or three Winchesters in his arms, and he handed one to each of them, and asked at the same time what he got, and he says, "I got it all," or "got the whole of it," something to that effect, showed him the bundle, and they started and walked, I suppose, 200 feet ahead of the engine in the glare of the head-light, and told me I could go.

Q. Did you go?

A. Yes, sir.

Q. Where did you go?

34 A. I went back to the train and got in my car.

Q. How many of these men did you see out in front?

A. Three in front.

Q. How many did you see altogether of these robbers?

A. I only seen three of them.

Q. Was there any talk there among them?

A. Yes, sir; they were asking about some one.

Q. Who were they asking for; do you remember?

A. I could not swear as to that.

Q. What did they say?

A. They wanted to know where some one was; somebody was missing, and went to talking in Spanish, or some kind of gibberish; I don't know whether it was Spanish or Indian, some dialect; talked very fast, at any rate.

Q. Did you hear them holler for anybody? Do you remember anything about that?

A. Well, no; I don't believe I heard them holler.

Q. You have forgotten the name of the one who it was they were asking where he was?

Yes, sir; I have forgotten his name.

Q. Do you remember whether it was the man who was on the car with you, or some of the others who was asking where the somebody was that was missing?

A. The man that came up out of the brush there that asked where so-and-so was.

Q. Do you know who it was that was talking this Spanish?

A. Well, the fellow that said he was the captain; the one that came out with him, and the one that came out of the brush; I do not know whether it was Spanish they were talking or not; it wasn't English.

Q. They were the men who were talking in a foreign language?

35 A. Yes, sir.

Q. Do you know who this man was that was in the car with you? Have you ever seen him since?

A. I have seen him dead since.

Q. Where did you see him?

A. At Vinita.

Q. How long ago?

A. I can't state the exact date.

Q. Well, who was it?

A. I don't know; he was a dead man.

Q. What was the dead man called when you saw him?

A. He was represented to be a man named Queen.

Q. He is the man who was in the car with you?

A. Yes, sir.

Q. Do you know who brought him to Vinita?

A. No, sir.

Q. How came you to see him there?

A. We were going north one day, and Charley La Flore came out and told me to come out and look at a dead man and see if I would recognize him.

Q. Charley La Flore is here, is he?

A. Yes, sir.

Q. You say he was dead at Vinita?

A. Yes, sir.

Q. That man they represented as being Queen, and he is the man who was in the car?

A. Yes, sir.

Q. Called himself Capt. Buck or Capt. Jack, or whatever it was?

A. Yes, sir.

Q. You don't remember how long after this killing it was you saw Queen at Vinita?

A. It was probably six months; maybe longer; I am not positive.

Q. You knew him to be the same man?

A. Yes, sir.

Q. Was there a light in your car?

A. Yes, sir.

Q. You saw him by the light in your car?

A. Yes, sir.

Q. Of course, you could not have gotten these things out without a light?

A. No, sir.

36 Q. You know him now to be the same man?

A. Yes, sir.

Q. Now, did you recognize any others of them?

A. No, sir.

Q. You do not know who they were?

A. No, sir; the other man that was in my car had a bandana handkerchief tied right around here (indicating that handkerchief-covered portion of face from eyes down, tied behind).

Q. How about the man who came out of the brush; did he have any disguise on?

A. I don't think he did.

Q. Did you see the man pretty plain who came out of the brush? Would you know him again if you would see him?

A. No, sir.

Q. You wasn't with him as long as you were with the others?

A. No, sir.

Q. It was upon the left side of the train as you were going down that these men came up to you?

A. Yes, sir; they came into my car from the left side.

Q. How many shots did you hear fired there altogether?

A. Three.

Q. You heard one before you went to the door?

A. Yes, sir.

Q. And when did you hear the others?

A. One just as I got to the door, and one before they came in.

Q. Did you hear any talk upon the outside?

A. Yes, sir.

Q. What were they saying?

A. Wanting to know where in hell the express car was.

Q. Did you hear anything else besides that?

A. While they were in the car I could hear them talking outside; somebody talking about going back and flagging that train; but I could not tell what they were saying.

Q. Was there a train behind you?

A. Yes, sir; a freight.

37 Q. How close?

A. They pulled down there and stopped; I am not positive how close.

Q. You heard somebody talking about going back and flagging that train?

A. Yes, sir; didn't want to have anybody killed.

Q. You didn't hear anything else; no hollooing or screaming?

A. No, sir.

Q. On the right side of your car was there a door?

A. Yes, sir.

Q. Was that open or closed?

A. It was closed on the right side; the left side was open, just one door.

Q. Your express car is immediately behind the mail car?

A. Yes, sir.

Q. Do you remember the man who came out of the brush sufficiently well to give any description of him?

A. He looked to me like a man that had a very light beard; it was about that long, all over his face.

Q. About an inch long?

A. No, sir; not an inch; just enough to cover his face well.

Q. You don't know of your own knowledge from which side of the car Tarver was shot?

A. No, sir; not of my own knowledge.

Q. Could you tell on which side of the car the shots were fired? Could you tell anything about that?

A. No, sir.

Q. About how long did you remain there before you went on after they left?

A. We did not remain there long.

Q. How long did it take, during the whole of this time; how long was it?

A. I guess about 20 minutes.

Q. That is, about 20 minutes you were stopped?

A. Yes, sir; that is a guess, of course.

38 Q. Did you see any shot or wounded people around there?

A. I did after I got to Muskogee; I staid in the car until I got to Muskogee.

Q. Who did you find then wounded?

A. I was told there was a man back in the car dead and I went back and looked at him; I come out and I heard there were two men shot; that Ryan and Colton were both shot through the arm.

Q. What position did Colton occupy on the train?

A. Chief mail clerk.

Q. What did Ryan occupy?

A. Newsboy.

Q. Two wounded and one killed?

A. Yes, sir.

Cross-examination by Mr. BARNES:

Q. It was six months after you were held up you saw this man's remains, was it?

A. Yes, sir.

Q. Was he dressed in the same way, present the same general appearance as when you first saw him?

A. No, sir; I could recognize him, though.

Q. Was he dressed different?

A. Yes, sir; his face was daubed with mud at the train.

Q. How was his beard?

A. When they robbed us he had a little beard on his face, not much though, maybe three or four days' growth, and looked dirty, and when I saw him he had just been shaved.

Q. Shaved after he was killed?

A. Yes, sir.

Q. Have any mustache?

A. Yes, sir.

Q. What sort of a mustache?

A. Black.

Q. Low man or tall man, or man of medium heignt?

39 A. He was a pretty good-sized man.

Q. You saw one very tall man among the robbers, did you not?

A. No; I don't think I saw a very extraordinary tall man.

Q. You did not see a tall man with a black mustache there?

A. You could call him a tall man, not very extraordinary tall.

Q. Outside of this man you have described?

A. No, sir; I do not remember of seeing him.

Q. This man had a short beard at the time—that is, this captain?

A. It wasn't a beard; there was two or three days' growth of beard on his face.

Q. His beard wasn't turned out; he simply hadn't been shaved for several days?

A. Yes, sir.

Q. The man that came out of the brush had a short beard?

A. Yes, sir.

Q. That is, it wasn't an inch long; about half an inch long?

A. Yes, sir; over half an inch long.

Y. All over his face?

A. Yes, sir.

Q. Didn't you see a tall man there with a white hat on, and dark mustache?

A. Do you mean a very tall man?

Q. Yes, sir?

A. No, sir.

Q. Did you see Bishop there during the robbery?

A. Yes, sir; I did; when I looked out of the door—I could not swear it was Bishop. I saw them taking off the boxes; I suppose that was Bishop.

Q. You don't know positive anything about it?

A. No, sir.

Q. The third man you say had a bandanna around here?

A. Yes, sir.

Q. He was with Buck, was he, at a certain time?

A. Yes, sir.

Q. I don't believe I got it exactly as to how he got on the

40 train; just state that part of it again, how they came in the car. In the first place, did you see this man that had this handkerchief around him get on your car?

A. Yes, sir; after the other man had came in.

Q. Who was it brought the man to the door there?

A. That was the captain.

Q. He brought the man to the door?

A. Yes, sir; and compelled him to crawl up, and he crawled right up behind him.

Q. Who was that that he brought to the door?

A. As I understand it his name is Jenks.

Q. Was that when the robber you speak of first came to the door?

A. No; there was somebody standing at the door when I went to the door.

Q. Some one of the robbers?

A. Yes, sir; they threw a gun up and said, "Get back in there, you son of a bitch, or I will blow your head off."

Q. Who was that?

A. I could not say; I just went to the door and the man threw the gun up and I left.

Q. You did not observe his face, whether he was masked, or anything about it?

A. No, sir.

Q. You just heard him say something and saw a gun go up and that was all?

A. Yes, sir.

Q. You had a light in the car?

A. Yes, sir.

Q. Couldn't you have taken in the man's general appearance?

A. I didn't have time.

Q. I don't think you are a very scary man; you do not look like it. You was not scared a bit?

A. Yes, sir, I was; it was enough to startle a person.

41 Q. Then you might not have made as accurate observations if you were excited?

A. Yes, sir; just threw a gun up in my face and I got back. Certainly I was excited.

Q. Then you were excited during the transaction; you were so excited that when the man threw the gun up in your face that was all you could see?

A. I knew there was a man there?

Q. There was a light there?

A. Yes, sir.

Q. How close were you to him?

A. He was right down at the edge of the car.

Q. He looked awful tall, did he not?

A. I didn't notice.

Q. He must have looked like a giant?

A. It wasn't him; it was the gun.

Q. Didn't he look enormous in your eyes?

A. No, sir; I did not have time to see the man; I got back as quick as I saw the gun out there.

Q. It was light there; you hadn't put out either light then?

A. I know I had not.

Q. The door was open?

A. Yes, sir.

Q. How many shots did you hear before that?

A. There was one shot before that.

Q. These other shots, were they fired while this matter was going on there in your car?

A. No; there was one shot fired immediately after the running of me back in the car; I thought they were shooting at me.

Q. Then did you hear any other shot right away?

A. After they got in my car I heard another shot.

Q. You could not, where you were, locate these shots, I reckon?

A. No, sir.

Q. You would not undertake to do so?

A. No, sir.

Q. The first shot you heard was away back towards the bridge
42 or somewhere?

A. No, sir; I did not say that; I could not tell where they were.

Q. You spoke of hearing a shot; that you did not put any store by that, and thought somebody was firing out from the train. I understood you to say that shot was a good ways back?

A. No, sir; I could not tell where it was; I said I thought it was somebody on the train.

Q. Well, then, immediately after you ran back into your car you heard another?

A. Yes, sir.

Q. And pretty soon you heard another?

A. Yes, sir.

Q. How many more did you hear?

A. That was all I heard.

Q. You couldn't hardly think that shot was fired at you when you were back there in the train?

A. They told me to get back, and immediately after that I heard a shot and I thought probably they were shooting through the car.

Q. Do you think that man you could not describe at all fired it?

A. I could not tell; it sounded right out there.

Q. Where was he?

A. Right in front of me—of my car door—at that time.

Q. How could you have expected that you were shot at; could not you tell whether it was him or not—him right there at the door? It looks to me like you could tell whether that man shot or not. He was right there; the car is not half as big as this room.

A. The shot was not right at my car door.

Q. I will begin to believe you were scared, directly.

A. I was scared.

Q. I will begin to think you were too badly scared to know any-
43 thing. The idea of a man like you, in your business, not knowing whether the man at the door shot at you and the blaze of the powder and everything came in there. That won't do. Now, then, how long after you were run back in the car was it that this man shoved another man up in front of him and had the gun in the position you have described at that time; very quick, was it not?

A. No; I was back there probably a minute and a half.

Q. You were back there a short time?

A. Yes, sir.

Q. Time seems longer than it really is on such occasions, does it not; time seems longer than usual?

A. Yes, sir.

Q. You say it was between a minute and a half and a minute between these two occurrences?

A. It was a minute and a half, anyway; it was a minute or minute and a half; I could not say the exact time.

Q. What was that about flagging?

A. Somebody said something about flagging the freight train, not to let it run into us. The porter was out there, and he wanted to go away, and he said, "Somebody has got to flag that train," and we didn't want to kill a lot of people. That is all I could understand.

Q. You were in the second car from the engine?

A. Yes, sir.

Q. You say you could not locate the shots that were outside?

A. No, sir; I could not say how near they were; one shot was near my car.

Q. This train was headed due south?

A. Yes, sir; I think it is due south there.

Q. Do you know the time of night it was?

A. I don't know the exact time; it was between 8:30 and 9:30.

Q. Were you ever in a train robbery before?

A. No, sir.

44 Q. There were two of these men without beard, except in the way you have described; the other one you could not tell on account of this handkerchief, whether he had beard or not?

A. I have described them; yes, sir.

Q. The other one that had the handkerchief over his face; could you tell whether he had a beard or not?

A. No, sir; I could not.

Q. Then as a matter of fact you saw no man with a beard—that you saw the beard; you saw only three of the robbers—I mean with long beard?

A. No, sir; I saw no one with long beard.

Q. Of the three robbers you saw, you saw no man with a long beard?

A. No, sir.

Q. Is it not a fact that they all had long beards, except one man? Are you not mistaken about that?

A. No, sir.

Q. Might you not have been so excited you were mistaken about that?

A. No, sir; I wasn't excited after I found out how things lay.

Q. The man who had a handkerchief tied over his face, you could not tell whether he had a beard or not?

A. No, sir; I could not tell.

Q. He must have had it awful high up on his ears?

A. It was right up here, clear over his nose.

Q. Don't you think it is likely if that man had been a man of very heavy whiskers you would have seen some part of them, or their shape; something of that sort, through the handkerchief, even though he had that handkerchief over his face; that you could have detected in some way that he was a bearded man?

A. Yes, sir; I think so.

Q. Still, you say you can't say whether he had a beard or not?

A. No, sir.

45 Q. Which side of the train was it that the man came out of the brush on?

A. On the right side going south; west side of the train.

Q. How many men did you see on that side of the train?

A. He was the only one I saw on that side.

Q. When was it that man came up out of the ditch?

A. After they took me from the car, and we got out in front of the engine.

Q. From what place did he come out of the brush?

A. We went up on the left-hand side of the train, and came out in front of the engine about 10 feet; we came up on the track five feet maybe, and this man came out of the brush from the right-hand side. I could hear the brush rattle, and he seemed to come up out of the brush; there seemed to be a little path there, or something.

Q. He wore no mask; made no concealment?

A. No, sir.

Q. Queen had on no mask, I believe you say?

A. No, sir.

Q. Wasn't he masked and disfigured, and blackened, and painted?

A. No, sir; he had stuff on his face though.

Q. Wasn't he masked, too?

A. No, sir.

Q. Are you positive of that?

A. I am positive; I took a good look at the man.

Q. There was only one masked man?

A. Yes, sir.

Q. And he had a red handkerchief over his face?

A. Yes, sir; a bandana.

Q. You say that the man who came up out of the ditch brought an arm full of guns with him?

A. He had them in his arm this way.

Q. I believe you say he had two or three guns, anyway?

A. Yes, sir.

Q. Winchester guns, I suppose?

46 A. I suppose they were Winchester guns, they were long guns.

Q. What did the captain have, as you say he called himself?

A. He had a pistol.

Q. Who was it held a gun up behind the man he shoved up?

A. It was a pistol, not a gun.

Q. You are drawing a distinction, then; when you spoke of a gun being held up behind the man awhile ago did you mean a pistol?

A. Yes, sir; I mean pistol.

Q. Did the other man have a gun, the other man that came in behind?

A. He had a pistol.

Q. Now, then, the two men who came in the car and held you up, both of them had pistols?

A. Yes, sir; one had one and the other had two.

Q. The way you described this thing awhile ago, you know, left the impression with us that the man you saw first at the door had a gun and that the man who marched behind this man had a gun?

A. They were pistols.

Q. You want to qualify that, that the man who stood at the door had a pistol instead of a gun?

A. Yes, sir; I would not say whether it was a pistol or gun or not; I know that he had something in his hand; that he throwed it up and told me to get back; I am pretty certain it was a pistol, because I saw the barrel.

Q. Wasn't that the same man that was the captain?
A. I don't know.
Q. Then you saw three robbers, and neither one of these three robbers had a gun except the one that had three guns in his arms coming up out of the brush?
A. What do you mean by guns?
Q. I am drawing a distinction between pistol and Winchester.
47 A. None of them had a gun except the man that came up out of the brush.
Q. He had three?
A. I could not say whether there were three or more; there were more than two.
Q. And you saw no man on the left-hand side of the train with a gun?
A. No, sir; I saw no one on the left-hand side with a Winchester.
Q. How was the surface of the ground there, if you remember, as to whether it was level, rough, or how?
A. I am not certain; I think there was a small—do you mean whether the track is right on level ground or not?
Q. Yes; the ground around it; whether it is level or broken?
A. It is tolerable level.

Redirect examination by the DISTRICT ATTORNEY:

Q. When you were on the train and this fellow demanded that the safe should be opened, and he had the two pistols on you, what did you say to him when he told you he was going to shoot you?
A. First, he asked me to open the safe, and I told him I could not; then he put the guns to me and told me if the safe was not opened in 30 seconds I was a dead man. I told him I guessed I would have to die. I stood still and did not say anything else more.
Q. The man that came out of the brush had three guns; what kind do you mean, Winchesters?
Q. I don't know whether they were Winchesters or not; they were not pistols; they were guns and not pistols.

48 WILLIS P. COLTON, having been duly sworn on behalf of the Government, was called, and being examined by the district attorney testified as follows, to wit:

Question. Your name is Willis P. Colton?
A. Yes, sir.
Q. Where do you live?
A. In Kansas.
Q. What was your business in 1888?
A. Railway postal clerk.
Q. What railroad?
A. M., K. & T.
Q. Were you at the robbery at the Verdigris?
A. Yes, sir.
Q. When was that?
A. Night of June 15th, 1888.
Q. Were you postal clerk at that time?
A. Yes, sir.

Q. How far was the postal car from the engine?

A. Next car to the tender.

Q. Do you remember of stopping at Gibson?

A. No, sir; I never attended the stations; I am usually at work, and don't know anything about it.

Q. Go on and state the first thing you observed at Verdigris.

A. After the train was stopped there at the water tank, or on the Verdigris bridge—it was rather an unusual place for that train to stop to take water; after they had stopped a longer time than they usually do to take water, I went to the door to look out.

Q. To what door?

A. To the side door. We have four doors to the postal cars; it is 50 feet long, and two doors on each side.

Q. On which side of the train did you go?

A. On the east side.

Q. Right or left hand side going south?

49 A. On the left-hand side going south.

Q. What position did you take at the door?

A. We have a crane across the door to catch the mail at stations we do not stop at. A person standing up straight, it takes him about on the breast; it is of iron. I went to the door, and I heard some voices after I got to the door, I think, and I asked what was the matter.

Q. What position did you take?

A. I leaned out of the door on that iron crane; I had my arm up like this, looking longways.

Q. How did you have your arm?

A. Right close to my head; had my arm resting on the crane, trying to look longways of the train; the crane prevents us getting our bodies out of the door. A person has to reach their head out to see.

Q. Go ahead.

A. I think I asked what was the matter; but, at any rate, somebody hollored, "Get back, you son of a bitch, or I will blow your head off." Before they fairly got the words out of their mouth, before I had a chance to move, I was shot.

Q. Where was you shot?

A. Through the left arm; right through my arm here, up against my head; my eyebrows all singed off, and my eyelashes, and my face filled full of powder.

Q. Your left arm is the one you had on the crane?

A. Yes, sir.

Q. What did you do?

A. I wheeled around to go to the front end of the car, where we had a lot of mail piled; I thought I would be safer there than anywhere else. That was the south end at that time.

Q. Did you say anything further than "What is the matter?"

A. No, sir; not that I have any recollection of.

Q. At that you heard somebody hollo, "You son of a bitch, get

50 in there, or I will blow your head off," and immediately a shot fired?

A. Yes, sir.

Q. Did you see from whence the shot came?

A. No, sir; I never saw a thing. I could just see forms; it was moonlight. It was in the shadow of the train.

Q. You did not see how close the man was when the shot fired?

A. No, sir.

Q. He was close enough to powder burn your face?

A. Yes, sir.

Q. Where were you shot?

A. In the left arm; through the left forearm; the lower part of it. (Witness exhibits wound to jury.)

Q. You went to the south end of the car which was the front end at that time?

A. Yes, sir.

Q. What occur'ed after that?

A. After I had been there, I suppose three or four minutes, I heard two more shots. I should judge about five minutes after that or ten, there was a man came and got about half way into the car door and told us to come up in front; stuck a gun up in there and repeated it the second time. Mr. Jenks was in the car with me and he told him to get up, and he got up; and he told him to throw his hands up, and he got them up; and I believe the man that was in the door stepped inside and stood up in there holding his gun toward us. There was another man with him got about halfway in the door and had his gun pointed back.

Q. Were they disguised in any way?

A. I could not say positive whether they were or not.

Q. Was there any light in your car?

A. Yes, sir; at that time there were four lights burning. There were fourteen lights in the car, but we were through with most of the work and the back end of the car was rather dark.

51 Q. How long was your car?

A. Fifty feet; postal cars vary in length; the ordinary length is about 30 feet.

Q. You could not tell whether they were disguised or not?

A. No, sir; I wasn't in a very good condition to see. I was in the back end of the car and I was suffering considerably.

Q. Did they make you get up?

A. No, sir; they took Mr. Jenks out. In the first place, after he got up to the front end, the man told him to open up his safe, and Janks said, "We haven't any safe here," and he said, "You are a damned liar." Jenks said, "This is the mail car." That seemed to satisfy the man. He said then, "Come out of here with me," and that is all I know; they got out.

Q. Was that before or after the other two shots were fired?

A. After the other two shots were fired that this occur'ed.

Q. You do not know anything that occur'ed after that there at the place?

A. No, sir.

Q. You remained in the car, did you?

A. Yes, sir.

Q. Did you know these men at all? Could you see them well enough so as to be able to identify them?

A. No, sir.

Cross-examination by Mr. BARNES:

Q. Which side of the car were you on?

A. On the east side of the car.

Q. The car was going south?

A. Yes, sir.

Q. Then you were on the left-hand side of the car?

A. Yes, sir.

Q. How far were you from the ground?

A. I was as far from the ground as the floor of the car was from the ground.

52 Q. About how far would that be?

A. I should judge between 4 and 5 feet; it was an ordinary passenger coach or postal car.

Q. When you were leaning on the iron crane did you have your face against your arm?

A. I had it very close; I don't suppose it was exactly against it.

Q. The shot struck your arm on the inner part?

A. Yes, sir.

Q. Was that the first shot that you had heard?

A. Yes, sir; I am very sure it was the first shot or I would not have been to the door.

Q. There might have been another shot before that?

A. Yes, sir; but I didn't hear that if there was; that was the first shot I heard.

Q. How many did you hear after that?

A. I heard two.

Q. You do not know whether you were shot with a gun or a pistol?

A. No, sir.

Q. How many men did you say came into the car after you were shot?

A. I said one man came into the car and another man stood in the door about halfway in.

Q. There were two men there in the car, or partly in the car after you were shot?

A. Yes, sir.

Q. Don't these mail cars have a little passageway on one side of them so you can enter at the end and come down about halfway and go into the room where the postal clerk stays?

A. Some cars do, but this was a full car; there were no end doors to that car; we have four doors to a car, two on each side.

Q. There is no platform to walk into the car on?

A. No, sir.

Q. A man then would have to come in from the side of the car?

53 Q. He would have to crawl in in some shape; that is, he could not walk in like he would walk in on a platform?

A. There is an iron step there to step on, and side handles.

Q. He would have to get up on that step?

A. Yes, sir.

Q. There was one man came in; you could not describe him—you could not describe either of them?

A. No, sir.
Q. You could not tell whether they were masked or not?
A. No; I could not tell you.

54 HARRY RYAN, having been duly sworn on behalf of the Government, was called, and, upon being examined by the district attorney, testified as follows, to wit:

Question. Your name is Henry Ryan?
Answer. Yes, sir.
Q. What position, if any, did you hold on the M., K. and T. R'y in 1888?
A. News agent.
Q. That is the boy that handles the papers, chewing gum, books, tobacco, and so forth?
A. Yes, sir.
Q. Were you present at the robbery at the Verdigris in 1888?
A. Yes, sir.
Q. State the first thing that attracted your attention there after the train stopped at the Verdigris.
A. There was a shot attracted my attention the first thing.
Q. Where were you at that time?
A. I was in the car.
Q. What car?
A. Smoking car; fourth car from the engine.
Q. What car was the man in who was killed, Mr. Tarver?
A. The same car I was in, the fourth car.
Q. When you say the fourth car you do not count the tender?
A. No, sir.
Q. When you heard the shot fired outside what did you do?
A. I walked out on the platform, was standing there; I had one arm up on the car and the other on the break, swinging out, kind of looking out, and I noticed an object coming down.
Q. You had one hand up on the car; were you holding anything?
A. I just had my hand up like on the car.
Q. The other hand on the round top of the break?
A. Yes, sir.
55 Q. Swinging out?
A. Yes, sir; kind of looking out this way.
Q. Were you on the front or rear platform of the car?
A. I was on the head platform of the car.
Q. Which hand did you have on the car?
A. The right hand.
Q. Left hand hold of the break?
A. Yes, sir.
Q. Swinging out on which side of the car?
A. West side.
Q. That would be the right hand side the way you were going?
A. Yes, sir.
Q. You say you saw an object; what was that object?
A. It was a figure; it appeared to me about the size of a man.
Q. What next?

A. It was carrying something that looked like a stick, or Winchester, or gun of some kind. About the time I saw it he raised it; I saw a flash; and the next thing I felt my arm was shot.

Q. It didn't look so much like a stick when it flashed, did it?

A. No, sir; it didn't look like a stick then.

Q. Did he say anything before he shot?

A. I never heard him say anything.

Q. You saw a flash and you were shot in the arm, were you?

A. Yes, sir.

Q. Which arm were you shot in?

A. Right arm.

Q. The one that was up on the car?

A. Yes, sir.

Q. What did you then do?

A. I walked around; went right back in the car, closed the door, stepped over a dead man there was there that was shot, laying down across the aisle.

Q. What was the matter with the man you stepped over?

A. He was shot.

Q. Was he alive or dead?

A. I didn't stop to see.

Q. You know from what occur'ed afterwards whether he was
56 dead or not?

A. He was dead.

Q. Where did you go to when you stepped over him?

A. Went to the rear end of the car, to the ice cooler.

Q. What did you do then?

A. Began to take care of my arm; some parties there helped me.

Q. The ice cooler is where the water is?

A. Yes, sir.

Q. You put water on your arm, did you?

A. Yes, sir.

Q. How many shots did you hear fired at the time you were shot, or could you tell?

A. Two, to my knowledge; one when I went out and the one that shot me; that is all I heard.

Q. You only heard two shots fired?

A. Yes, sir.

Q. Can you show that place where you were shot?

A. Yes, sir. (Witness does as requested, showing that it entered under forearm and went through the flesh of the forearm.)

Q. Which way were you looking?

A. I was looking out of the west side of the car up towards the engine.

Q. Do you remember anything else that occur'ed after you went back into the car?

A. No, sir.

Q. When did you first discover that the man you stepped over in the aisle there was dead?

A. The next morning after I came up to catch the train to go to Sedalia from Muskogee.

Q. Where did you stay that night?

A. I remained right there and went to sleep there in the back part of the car, three or four seats from the rear end.

Q. You don't know anything about the condition 'f the other man; you didn't know whether he was dead or not until the next morning?

A. No, sir.

57 Q. You say that there was no warning given, or nothing said, so far as you know, when you were shot?

A. No, sir.

Q. Did you notice whether the ball went through into the car?

A. No, sir.

Q. You don't know anything about that; you didn't look?

A. No, sir.

Cross-examination by Mr. BARNES:

Q. Which end of the car were you at?

A. I was at the head end of the car.

Q. Which one of the cars?

A. The fourth car from the engine; there is the mail car, express car, baggage car, and smoker; I was in the smoker.

Q. You were shot in which arm?

A. Right arm.

Q. That is the one you had up?

A. Yes, sir.

Q. You had the other hand on the break, and you were swinging?

A. I was swinging my foot back and forth.

Q. Where did you have that hand?

A. Up on the car.

Q. Your face was south?

A. Well, southwest.

Q. Which way was the man coming that shot you?

A. He was coming from the southwest, up from towards the engine; he was coming down towards the car where I was at.

Q. That was the first shot you heard?

A. No, sir; the first shot I heard I was in the car, and I came out.

Q. How long before that?

A. I was standing in the car the first shot, and I just came right out.

58 Q. Whereabouts in the car were you standing?

A. I was standing on the head platform of the smoker, on the west side.

Q. I thought you said you were standing in the car when you heard the first shot?

A. I was in the car when I heard the first shot.

Q. The ball that struck you passed on, did it?

A. I never looked to see.

Q. It didn't lodge in you arm?

A. I felt it; I felt my arm was shot; that is all I knew of it.

Q. Could you tell which way that ball struck?

A. No, sir.

Q. You say your face was to the southwest?

A. Yes, sir.

Q. How did you have that hand?

A. I had it up on the car, on the smoker.

Q. Then you must have had the open part of your hand against the car?

A. I had it laid up against there.

Q. Of course you didn't have the back of your hand against it?

A. No, I didn't have the back of my hand there.

Q. Was that man about opposite to you, or had he quite gotten to you; you say he came down from the engine, or from towards there?

A. Yes, sir; came from the engine down towards the car I was standing on.

Q. And that when he got nearly to you he fired?

A. Well, it was a pretty good distance when he fired.

Q. Was he the length of a car away from you?

A. No, sir; not quite that far.

Q. Well, how far away from you was he? How much did he lack of reaching you?

A. I could not just exactly state; about half a car length, it appeared to me; it was night, you know.

59 Q. How far inside of the car was it in the space you were standing in there that you had your hand up against the car, how far from the outer edge or side?

A. I had it right on the edge of the car.

Q. You were in on the platform?

A. I was standing right there on the top step.

Q. And this man had gotten within half a car length of you?

A. I could not say exactly whether it was exactly half a car length.

Q. I am not holding you down to mathematics, but I want you to just state as near as you can remember it; that is all. It is your judgment that he was about half the length of a car from you?

A. Yes, sir.

Q. I believe you say there was no sign of that ball on the car?

A. I never looked to see; as soon as I was shot I went in the car.

Q. There was none there, so far as you know?

A. No, sir.

Q. Did you travel on that train afterwards?

A. No; not then; it has been a good while that I travelled on it after that.

Q. You have worked on the same road since then?

A. Yes, sir.

Q. Same train?

A. I worked on the same train and the same run.

Q. On that same smoker?

A. I could not tell; I never took the numbers of the cars.

Q. Don't you know you have since worked on that same car since that time?

A. No, sir.

Q. You say you don't know what became of the ball; it went on; you left the impression it did not hit the car, didn't you?

A. I don't know anything about the ball.

60 Q. You said it hit your arm and went on; you don't know from which side of your arm it hit; you don't know as a matter of fact whether that shot came from the right or left, according to that, or whether it came endways; you say it hit your arm and went on?

A. I don't know whether it went on or not.

Q. It did not lodge in that car as far as you know?

A. No, sir.

Q. It must have jammed right into it?

A. I never stopped to see.

Q. You can't say whether you ever worked on that same car afterwards, or not?

A. No, sir.

Q. You staid on the car, I understood you to state?

A. I said I staid on until I got to Muskogee, and then got off and staid over night at Muskogee.

Redirect examination by the DISTRICT ATTORNEY:

Q. You saw the flash of the gun?

A. Yes, sir.

Q. Was that from the west or east side of the train?

A. West side—southwest.

61 WALLACE H. RASBACK, having been duly sworn, was called upon behalf of the Government, and being examined by the district attorney, testified as follows, to wit:

Question. What is your name?

Answer. Wallace H. Rasback.

Q. You were the engineer on that train that was robbed at Verdigris?

A. Yes, sir; I was.

Q. Do you remember stopping at Gibson Station?

A. I do.

Q. How far is Gibson Station from Verdigris, the place of the robbery?

A. Well, I never had no accurate measurement of the distance, but I would suppose it to be between about a mile and a quarter and two miles, somewheres about that distance.

Q. From Gibson to Verdigris, the place of the robbery?

A. Yes, sir.

Q. You say you remember stopping at Gibson; did anything happen there, anything occur; did you see anybody get on?

A. No, sir; it did not come under my observation.

Q. State the first thing that attracted your attention directly concerning the robbery; I will ask you first if you know a man by the name of Bishop?

A. I do, sir.

Q. What was he?

A. He was the line superintendent and repairer of the machinery and tanks; tank repairer, commonly called.

Q. Was he on the train?

A. He came to me about 30 miles from there and asked me to stop at Verdigris tank that he might put off a heavy box of tools; I presume likely he was on the train there.

62 Q. Now, then, you may go on and answer the other question.: What was it that first attracted your attention in regard to this robbery?

A. We left Gibson Station and passed along probably about a quarter of a mile, and in the meantime there was a man stepped up behind me——

Q. While you were going?

A. Yes, sir; while we were going, and he says, "I want you to stop the express car just over the bridge." I replied that I had been asked to do that once before.

Q. What did you mean by that?

A. I supposed it was some helper that Mr. Bishop had sent over, and he was giving his orders; that was all.

Q. The express car is the one that he wanted stopped just over the bridge?

A. Yes, sir.

Q. Did you see the man at that time?

A. No, sir; I didn't notice him.

Q. Then he repeated, "I don't want you to pull the car an inch over the bridge." He says, "If it is, I will kill you." And when we got most stopped—but before that he says to me—the fireman had called my attention to the fact—he had first told me to stop, and then he spoke to me and made this remark, and I looked around and I saw then—began to realize—what was up, and he says to me, "Was you ever held up before?" I told him no; I hadn't been. He says, "Some of you have been held up." I told him there was a train held up on the Choctaw Division not long ago. He made the remark that we had no school boys to deal with this time; that it was Capt. Buck's gang, as I understood him to say.

63 Q. You state you looked around after the fireman had called your attention to this matter, and this man had told you that he didn't you to pull an inch beyond the bridge; that if you did he would kill you, and you looked around and realized your condition. What did you see?

A. I saw a revolver placed up close to my head; this man standing there with it in his hand.

Q. This man who had been talking to you?

A. Yes, sir.

Q. What kind of a looking man was he?

A. This man was a medium size man, dark complexion; that is, dark hair and dark complexion.

Q. Did you notice any beard?

A. He had a mustache, and it looked to me like he had short whiskers on his face, like it might be a growth of short whiskers of three weeks or so, of black whiskers.

Q. Black mustache?

A. Yes, sir, dark; I wouldn't say positively right black; nearly so, though.

Q. Where was the fireman during this time?

A. He had driven the fireman up in the corner on his seat before my attention was called at all.

Q. Now, then, after he made this threat to you, and told you if you took that car an inch over the bridge that he would kill you, you may go on from there and state what occur'ed after that.

A. We came down and got most stopped, and I told him I didn't think it was far enough; he said, "Pull it a little further," and I started the train a little bit further ahead and then stopped; he ordered the fireman down, told him to take the coal pick, and he ordered me down. The fireman got down first; I got down behind the fireman, and he followed the both of us down, and we started back towards the express car.

Q. When you got down did you see anybody else?

64 A. As we got down to the end of the mail car I saw another man.

Q. Why did you start down towards the mail car?

A. Because the mail car was between the express car.

Q. Why didn't you go out the other way; down south?

A. He told us to go this way.

Q. He directed you, did he?

A. Yes, sir, which way to go. When we got to the end of the mail car the man that held us up on the engine took the lead, and this other man that was standing there fell in behind.

Q. You have not mentioned about any other man; where did you find another man?

A. At the south end of the mail car.

Q. Was he armed?

A. Yes, sir.

Q. How?

A. With a revolver.

Q. What kind of a looking man was he, if you could tell?

A. He was of light complexion; looked to have sandy mustache and chin whiskers.

Q. That is two men; the one on the engine took the lead?

A. Yes, sir; took the lead from there. At the same time we met the porter there.

Q. Where did the other man go, if the one on the engine took the lead?

A. He went in behind us, in the rear, and guarded us.

Q. There were two of you, you and the fireman?

A. Yes, sir.

Q. Where did you meet the porter?

A. Right close to the end of the car.

Q. With them, or did he just come up?

A. He was just coming up.

Q. What did they do with the porter?

A. Put him in line with the rest of us.

65 Q. Go ahead.

A. And then we started back towards the express car. When we were about pretty near the north end of the mail car the messenger stuck his head out and said, "What are we stopped here for?" and he said, "Take your head in there, or I'll put a hole through it." And he hadn't any more than told what he would do than he shoved his revolver up and fired.

Q. That was the mail clerk in the mail car?

A. Yes, sir.

Q. Which one fired at him?

A. That was the man that took the lead, the one that held us up on the engine.

Q. Which door did the mail clerk put his head out?

A. Small door on the east side of the car.

Q. Which end of the car?

A. North end.

Q. Had you passed that place before the man fired?

A. No, sir.

Q. How close was this man to him who fired the shot?

A. The distance, I suppose, from the car to the ground would be five or five and a half feet, and the destance from the man's feet up to his arms——

Q. Do you put him right under him?

A. Yes, sir; that is, as close as a man can walk along side of a train.

Q. When he shot at this man did you know whether he shot him or not, or could you tell?

A. I could see the flash of the revolver, the fire and smoke go right up past his hand; I supposed it went right up under his chin.

Q. At the time you thought he was shot?

A Yes, sir.

Q. What became of the mail agent?

A. He disappeared in the car.

Q. Then what did you folks do?

A. We passed on down about midway of the express car, about opposite to the door.

66 Q. What occur'ed then?

A. This man who had taken the lead went back to the south end of the express car, got up on the platform, and was looking for a door, and he did not find one.

Q. There was no door in the end of the car?

A. No, sir; there was none there.

Q. Go ahead.

A. Then he came back down and went into the mail car, and what he done there I don't know, more than he came out again.

Q. Now, where was the other man during this time?

A. The other man was holding us under guard.

Q. Do you know whether anybody else came up and put their heads in at the mail car or not when this man went back in there?

A. I didn't see anybody put their heads in there.

Q. How long did he remain in the car?

A. I could not state exactly; it wasn't but short time.

Q. Then what?

A. Then he came out with another man ahead of him.

Q. Who was the man ahead of him?

A. I could not say who the man was, but it was one of the mail clerks.

Q. Then what?

A. He came back to the express car and he made this man, the mail clerk, get into the car ahead of him, and he followed them in, and that is as much as I could see of them while they were there. I could hear them talking.

Q. What became of you then?

A. We were under guard of this man sitting down on the ties right under the door.

Q. Could you hear what was going on inside?

A. Yes, sir; we heard the conversation in there.

Q. What did you hear?

A. I heard them threaten to shoot the express messenger if he didn't open the big safe.

67 Q. Did you say anything then?

A. I remarked to the man who was holding us under guard that there was no use to kill that poor fellow, that he did not know any more about the combination of the safe than I did. He then made the remark that he had no business up there in the car if he did not know his business, and I explained to him then the combination of it, as I understood it, that it was only known by men at terminal points; and they still threatened to shoot, and I told him if there was any shooting going on we had better move out of there, these 44's might come through the bottom of a car, and we moved back then about opposite of the trucks of the car, combination of wheels.

Q. How many shots had you heard fired up to that time?

A. There had been up to that time three shots.

Q. You have only told us about the first shot.

A. Shortly after the first shot was fired I heard two shots repeated back from there; just exactly where I could not locate.

Q. Could you see the flash?

A. No, sir.

Q. Was it on the same side of the car with you?

A. I don't know that, because I did not see the flash; the reports would sound pretty near alike on either side.

Q. Where were you when you heard these two shots fired?

A. We were on our way back from the engine to the express car.

Q. You were facing to the rear?

A. Yes, sir.

Q. You heard the shots fired back that way somewhere?

A. Yes, sir.

Q. If they were on your side of the car, couldn't you have seen the flash?

A. If they were on my side I might possibly have seen it if my
68 attention had not been some other way, and possibly I might not have seen it. The flash of a gun does not last long.

Q. How far apart were these two last shots?

A. They was not but a short distance between them, to the best of my recollection now.

Q. Close together, were they?

A. Yes, sir.

Q. About how long after the first shot was fired was it until these two were fired?

A. The interval probably was about twice or three times as long as it would be between the other two, according to the best of my recollection now.

Q. About how long would you think it was from the first shot to the second? About how long, if you can give an idea?

A. I suppose we would call it a minute; I don't say that it was just exactly a minute.

Q. You could not tell that, of course, but it was a short time?

A. Yes, sir.

Q. After you told this man there was danger of being shot where you were sitting on the ties and you went back to the trucks, what did you do then?

A. Remained there until they came out of the car on the ties.

Q. Who came out of the car?

A. The express messenger and the men that were in there; I didn't notice just who they were.

Q. Did they have anything with them?

A. They seemed to have things in their arms.

Q. What did they seem to be?

A. Looked like envelopes and papers is all I know.

Q. Did you notice who had that?

A. No, sir.

Q. Then what became of you?

A. They went forward towards the front end of the train.

69 Q. Did you go with them?

A. No, sir.

Q. What did you do?

A. The man that guarded us took us back to the engine.

Q. That is, towards the front end of the train?

A. Well, we didn't go with them; we went directly afterwards.

Q. You went directly after them towards the front end of the train?

A. Yes, sir.

Q. This man told you to go?

A. Yes, sir; he followed us up and told us to get on the engine.

Q. Did you get on the engine?

A. Yes, sir; we did, gladly.

Q. What became of the others?

A. They went forward in front of the headlight, front of the engine on the track.

Q. How many of them were there then when they got there?

A. I didn't count them. They stood there, a clump of men together; I was thinking of something else besides taking items.

Q. Did you see anybody else get with them?

A. I saw several of them there in front with the express and mail messenger; they took them in front with them.

Q. Then what did they do?

A. Finally they dispersed and went to the woods.

Q. Which side?

A. To the west side.

Q. Did all of them go to the west side of the woods?

A. Yes, sir; all that I saw started off to the west side.

Q. What kind of a place was it?

A. Well, it was at a water tank, and the woods were on the right. I guess at that time there was woods on both sides; there has been a little clearing since that. There was woods on both sides of the track, and the grade of the track is a little elevated.

70 Q. How far did the woods extend up and down the railroad?

A. They extended without any opening betwixt the Verdigris and the Arkansas River.

Q. How far is that?

A. I presume it is a distance of about four miles; between three and a half and four miles.

Q. How far did they extend the other way?

A. I don't know; I never have been out in that country.

Q. I mean up the track, north?

A. Oh, I suppose about a mile.

Q. It was the Verdigris River bottom, was it not? Was there large large timber or just small timber, or do you know?

A. Ordinary scrub forrest that grows there; there was some very large trees that grew in that woods; sycamore.

Q. How near was the nearest house outside of the tank house there?

A. I don't know; there are several places there in the timber; you cannot see any of them from the track except one; when you get most up to what we call Nigger Hill there is a little log cabin there, and that was about three-quarters of a mile from the tank to east.

Q. What kind of a mustache did you say the man who held up you and the fireman had?

A. A dark mustache.

Q. What kind of a mustache did the man have who guarded you there afterwards?

A. Looked to be a sandy mustache; chin whiskers, maybe a little darker.

Q. How big a man was he, large or small?

A. He was a medium, good-sized man.

Q. Do you know how he was dressed?

A. He had on a light hat.

Q. What kind of a hat did the other man have?

71 A. If I remember right he had on a dark hat and a dark coat; that is the best of my recollection; I am not going to make any positive statement of it, because a man can't observe these things so almighty close at such times.

Q. You say that the other man had on a white hat?

A. The one that guarded us; yes, sir; one of these light Texas hats.

Q. Did you observe his clothing any more particular than to be able to tell only what kind of a hat he had on?

A. No, sir; he had on a light wrap around his body.

Q. Light, colored clothing?

A. Yes, sir.

Q. After these men dispersed I suppose you went on?

A. Yes, sir.

Q. Did you notice whether any of them were masked?

A. No, sir; I didn't notice that myself.

Q. While you were, and these things were going on as you have been telling, did you hear any calling, anyone calling for anybody?

A. No, sir; I didn't notice any calling. I don't have any recollection of hearing any calling. I am not very good of hearing anyway.

Q. When they were about to leave did you notice any, or observe any?

A. No, sir; I don't remember of hearing any calling myself; there might have been some; I don't remember it.

Q. Did you hear what these men were saying when they were standing there ahead of the engine?

A. No, sir; there is more or less noise all the time about an engine, and the talking was off 15 or 20 paces, and I am not of the best of hearing in the world anyway.

Q. You did not hear what was said when they were out there in that clump?

A. No, sir; I did not.

72 Cross-examination by Mr. BARNES:

Q. Your hearing is good enough if there had been any loud calling; you would have heard that and noticed it?

A. If there had been any near me so I would have been noticing it I undoubtedly would.

Q. You didn't notice any masked men; if there were any of them masked you didn't notice it?

A. If there was any of them masked they did not come under my observation.

Q. You saw well, finally, the man who held you up on the engine?

A. Yes, sir.

Q. He was not masked?

A. No, sir; not to the best I could discern.

Q. You didn't see but one man on the engine that was holding you up?

A. No, sir.

Q. When you went to stop you stopped about where he told you to, and then moved up a little?

A. Yes, sir.

Q. Where was it you saw the next man?

A. After we got off the engine and started back.

Q. Which side did you get off on?

A. On the ease side.

Q. You saw another man then?

A. There was another man took us in charge there, besides the porter came up close to the end of the car at the time.

Q. You say he guarded you with a pistol?

A. Yes, sir.

Q. He had a light mustache and light chin whiskers?

A. Yes, sir; not very dark.

Q. Whiskers about the length of yours?

73 A. They must have a little longer than mine; he did not have a heavy beard all over his face; didn't seem to have any on the side of his face; was shaved clean.

Q. Was that the man who had on the white hat?

A. Yes, sir.

Q. And he had some kind of a light wrap around him, you say?

A. Something like a blouse like.

Q. He met you there near the south end of this car you speak of, I believe?

A. Yes, sir.

Q. Then which way did you go?

A. We then went back the way that the train came, which would be north; towards the north end of the mail car.

Q. Then what was the next thing that occurred there? You then told about this shooting, did you?

A. This shooting comes in on the mail messenger in the arm.

Q. Where was you taken after that?

A. About midway of the express car.

Q. Was you left under guard there then.

A. Yes, sir; we were left under guard under this second man we came into contact with.

Q. And then this first man you came in contact with and another man went into the mail car, did they?

A. The next thing was that the first man went to try to get into the express car at the end and there was no door to get in at.

Q. And then he and another man went into the mail car, did they not?

A. He went into the mail car by himself.

Q. Did you see any man get up into the door of the mail car a little ways?

A. I didn't notice.

Q. Was that all on the side of the train you were on?

74 A. Yes, sir; the movements what I speak of is what I saw.

Q. While you were there on that side at the place you describe you heard three shots?

A. Those shots were heard before we had got back to the express car; they were directly after the shot that occurred at the mail-car door, according to the best of my recollection. These shots were fired, and then this business went on afterwards, according to the best of my recollection of that occur'ence.

Q. You were on the left side of the train?

A. I was on the east side of the train.

Q. That would be the left, going south?

A. Yes, sir.

Q. The only shot that you saw on that side of the train was the one you have described as being the one at the mail man?

A. That is the only one that I saw; there might have been half a dozen and I would not have seen the flash of them.

Q. Was there any before that?

A. No, sir; none that I heard.

Q. How many men did you see on that side of the train altogether?

A. Well, we will have to count up: there would be the man who held us up, the one that guarded us, the porter, fireman, and myself would be, 1, 2, 3, 4—5, and then the coming of the mail messenger would make 6, and afterwards the express messenger would be 7, and outside of them 7 possibly there might have been others moving around there that I would not like to make it positive. I wish to remark in answering that question I don't want it understood that that was all there was on that train; the answer is applied to those I saw.

Recess until 1:30 o'clock p. m.

75 *Afternoon session, 1:30 o'clock.*

J. N. BISHOP, having been duly sworn, was called upon behalf of the Government, and being examined by the district attorney, testified as follows, to wit:

Question. What was your business in the summer of 1888?

Answer. I was in the employ of the M. K. & T., as tank repairer.

Q. Please state if you were on the train that was robbed, in June of the year, at Verdigris?

A. Yes, sir.

Q. Where did you get on the train?

A. At Chetopa, Kansas.

Q. Where were you going?

A. Verdigris tank.

Q. What for?

A. For the purpose of repairing the tank.

Q. Please state if you gave any notice to the engineer or anyone to stop at that place?

A. Yes, sir; I went to the engineer, I don't know whether it was at Vinita or Choteau, but I went and requested him to stop at the Verdigris tank, that I wanted him to stop there close to the tank so that I could get out some heavy boxes.

Q. Do you know how far Gibson Station is from Verdigris tank?

A. Very near it; it is about a mile and a half.

Q. When you were at Gibson Station please state if the train stopped there?

A. Yes, sir.

Q. The tank is at Verdigris bridge?

A. Yes, sir; right there close.

Q. Did you notice whether anybody got on at Gibson Station? If so, state what happened.

76 A. Well, yes, I noticed some parties trying to get on the front end of the train, and when the conductor or porter, I didn't notice which one it was, headed them off, one passed through between the cars and got onto the opposite side from the depot, went down to get on, and when the conductor's attention was called to it, about that time there was another one tried to get on, and I hollered and called the conductor's attention to that, and he or the porter hollered to "Keep off of there," to him, and when he spoke to him the party turned and went right back behind the depot.

Q. You saw him do that?

A. I was standing in the baggage-car door, and I saw it; yes, sir.

Q. A person got on?

A. Yes, sir.

Q. Where?

A. From where I was standing, I could not say whether it was on the mail car or express. I noticed him get on.

Q. You then saw another one trying to get on?

A. Yes, sir.

Q. What time were they trying to get on; while you were stopped or just as you were starting?

A. While we were stopped.

Q. There were two, I understand you to say?

A. Yes, sir.

Q. One got on and the other was kept off, and you saw him go behind the depot?

A. Yes, sir.

Q. You may go on and state what occurred after that.

A. When we started to pull out there was a freight train on the side track, and I walked to the other side, next to the freight train. The engineer was standing in the cabway, and I hollored to him and said: "Look out for us; they are going to stop down at the tank and let me off." When we got down to the tank and got opposite the coal bin I pulled out one box and got mine out on the top of that, and Mr. Harrison got the other one out and set it down on the ground.

77 Q. Who was Mr. Harrison?

A. He is the pumper there.

Q. Go ahead.

A. This was all done before the train come to a good stop yet. I stepped out on the coal bin, and as I stepped out the porter was standing on the step of the smoking car, and he called me by name and said: "Look out; you will fall." By that time the train come to a good stop, and the porter started on toward the front end and I stepped between the cars, and as I stepped down, or jumped down, my vest caught on a rod that swings out and tore it open. I turned around this way to look, and as I done that somebody passed me in a stooping position, running towards the engine. I didn't pay any attention to it, any more than just to notice him, as it is a common thing for tramps to try to get on trains at tanks, etc., and I tried to get back to where Mr. Harrison and his wife and a couple of other men were setting talking. I turned around. There was a space between the coal bin and shed. I took it to be about 2 feet and a half, and I kind of blocked the space. A man came up in front of me, and he said, "Where can I get on this train?" I turned around to let him pass and said, "You can get right on the front end," and he passed, and I didn't pay any more attention to either of them. I went on back to the corner of the coal bin, and the conductor stepped down on the platform and asked me what was the matter up in front. I told him I didn't know. I said, "I will go up and see." As I started up past the baggage car I just supposed that the breaks were stuck, and reached under to bleed the break, as I often do when I am out with them. Just as I was in the act of doing that I heard a pistol shot up at the front, and I saw the flash.

78 Before that shot some one said, "Take your head in there, you son of a bitch," and fired a pistol shot at the same time. I walked up then, and as I was passing from the baggage car to the express car, like passing both, I noticed some one running on the opposite side of the train going back to the coaches.

Q. On which side of the train were you?

A. On the east side.

Q. Is the tank on the east side?

A. Yes, sir.

Q. On the west side you saw somebody running down towards the rear?

A. Yes, sir.
Q. Up to that time you had only heard one shot?
A. Yes, sir.
Q. Now then, go on?
A. And then I passed on until I got almost to the express-car door; as I got there I noticed a man run up to the door and stick a six-shooter in the door and said, "Get back in, you son-of-a-bitch," and about that time I heard a shot at the back, to the rear, towards the coaches; when I heard that shot fired I heard somebody screaming.
Q. How many shots did you hear at that time?
A. I didn't notice but one shot.
Q. Did you know who it was screaming?
A. No, sir.
Q. What occured after that?
A. When I noticed this man stick his six-shooter in the door, and say to get back in there "you son-of-a-bitch" I began to think there was something wrong, and began to go back.
Q. Where did you say he stuck the six-shooter?
A. Into the door of the express car.
Q. That was before you heard the shot behind?
A. Yes, sir.
Q. Then you turned to go back?
A. Yes; I turned to go back and the porter called me by name
79 and he said, "Wait a minute." I turned around, kind of looked over my right shoulder; as I done that I noticed a fellow stick a six-shooter around the porter and said, "Capt., stand where you are," and I obeyed and stood there.
Q. What occured after that now?
A. After I stopped this man that first stuck the six-shooter in the door he got in the car, and the one that told me to stop he was standing with the porter, and the porter was on one side of the door like, and I was on the other, and I says to him, I says, "Men, you ought to send somebody back to flag that freight train; if they run into us on the bridge it will cause a considerable of a wreck; kill lots of people; and this man who stopped me hollered for somebody to go back and stop that freight train, and he said he didn't want anybody killed, and he said for the porter to go back and told me to stand where I was, and the porter started back and he got about opposite the front end of the smoking car and the freight had come to a stop, and he said, "Porter, you stand where you are; the freight train has stopped now." And then he got into the express car and left me standing there.
Q. Now then, that left you all standing there, then he went back and got into the express car?
A. Yes, sir; after the porter stopped he got into the express car, this man who stopped me.
Q. What became of you?
A. I stood there.
Q. Did you know where the engineer was at that time?
A. I knew he was somewheres close; I could hear him talking.
Q. Was he in front of you or behind you?
A. He was in front of me, towards the engine.

Q. You could hear him talking?

A. Yes, sir.

80 Q. The man who was holding him up wasn't the same man that was holding you up?

A. No, sir; not at first. The man that was holding me up got in the express car.

Q. That man got into the express car, and there was another man who put a pistol up in the express car just before that, and said, "You get back in there, you son-of-a-bitch; he got in there first, and the man that was holding you up got in there?

A. Yes, sir.

Q. You were back of him; you could not see the engineer; you could hear him talk?

A. Yes, sir.

Q. Did you see the man who was holding the engineer up after that?

A. No, sir.

Q. You had seen a man on the other side of the train, however?

A. I seen part of a man; what would be below the platform, like; I could not see his face.

Q. How many of them did you see, counting him as one?

A. I saw three.

Q. That is, how saw the man that was holding you up; you saw the man who got into the express car; you saw the man on the other side of the car?

A. Yes, sir.

Q. You did not see the man who was holding the engineer up?

A. No, sir; not that I know of.

Q. After the one that was holding you got into the car—go ahead and state what occurred then after that.

A. After they got into the express car I heard them talking to the express messenger; told him if he did not open the safe he would kill him. That is how I came to hear the engineer speak. The man that was guarding him kept hollering at them in the car to kill the son-of-a-bitch if he did n't open the safe; the man who was guarding the engineer and fireman.

81 Q. You could hear him but you could not see him?

A. Yes, sir. Mr. Rasback spoke up and said, "You might as well kill me as him; I could open it as quick as he could," or something to that effect.

Q. Now, then, what occurred after that?

A. About all I know then, when they started to get out of the car, I noticed them get out; I noticed four men get out of the car.

Q. Who were they?

A. Well, I don't know who they were. I didn't know at the time more than one of them. I knew the messenger; was well acquainted with him. I noticed him when he came out. He was the last one came out. He had some express packages in his left hand. I noticed that very particularly. When they all got down, I noticed they marched the express messenger ahead along up ahead of the engine in the middle of the track; there I noticed them make them hold up their hands about that time. One of them hollered "Come, on Joe," two or three times; called out loud, as if there was somebody missing, and they were ready to go.

Q. Do you know Hollaman?
A. I know a man that passes for Hollaman here.
Q. Do you know his name?
A. Tip, we called him.
Q. Do you know whether his name is Joseph or William?
A. No, sir; I don't know that.
Q. Then what occurred?
A. Then the express messenger came back into the car and the train pulled out, and after the train pulled out of sight, I was setting down on the abuttment of the bridge talking to Mr. and Mrs. Harrison.
Q. After the train left, who did that leave at the tank?
82 A. Left myself, Mr. Harrison, and his wife, and there was two other gentlemen there; I don't know who they were.
Q. Harrison was the pumper?
A. Yes, sir.
Q. He lived there, did he?
A. Yes, sir.
Q. I will ask you if after the train left if anybody came there from towards Ft. Gibson?
A. Yes, sir; a man came across the bridge.
Q. How long after the train left?
A. I could not tell you exactly; I think in the neighborhood of 20 or 30 minutes; the trains were out of sight. When he came across the bridge.
Q. How did he come?
A. He came on foot.
Q. From what direction?
A. From Gibson.
Q. Came from the north going south?
A. Yes, sir.
Q. Which side of the bridge were you on? Which side of the bridge is the tank on?
A. On the south side of the river.
Q. This thing that occur'ed was on the south side of the river?
A. Yes, sir.
Q. Between Muskogee and the river was it not?
A. Yes, sir.
Q. How many cars were on the south side of the river, had been pulled across the bridge?
A. There was the mail car, express car, baggage car, about two-thirds of the smoking car was off the bridge entirely.
Q. The rest was on the bridge?
A. Yes, sir.
Q. You saw a man coming from towards Ft. Gibson down there?
A. Yes, sir.
. Did he pass over the bridge?
A. Yes, sir; we were setting out on the abutment of the bridge; he came up and stopped and asked how far it was to Muskogee. We
83 told him how far it was; some one spoke up, I don't recollect whether it was myself or Mrs. Harrison; some one said "You had better be careful; a train was held up here just now; they may catch you."

He said, "Well, I guess they won't interfere with me." And he asked if there wasn't a wagon road he could go and not travel the railroad, something similar to that.

Q. Was he carrying anything?

A. Yes, sir; a little bundle tied up in a red handkerchief; I took it to be that night.

Q. What became of the man?

A. He passed on. After he passed I spoke up——

Mr. BARNES. (Counsel for defendant.) Never mind.

The DISTRICT ATTORNEY. After he passed by, what became of him?

A. He went on opposite the tank, and he turned off in the brush to the west.

Q. How far was that from the bridge?

A. Well, it is about 300 feet as near as I can recollect; I have measured it several times, too.

Q. You did not see anything more of him?

A. No, sir.

Q. Did you go out there next day in the brush to see what signs were there, if any?

A. Yes, sir; I walked out into the brush and along the road; there was a wagon road that goes off into the bottom there.

Q. Did you find anything there?

A. No, sir.

Q. Do you know when the officers came down there and who they were?

A. I knew two or three of them; I don't know just what time of night it was; we were still there when they came.

Q. Who were they?

A. I recollect Bud Kell was one of them.

Q. What time did Kell get down there?

A. I think it must have been about midnight when they came.

84 Q. Did you know any of the other officers?

A. No, sir; I don't believe I do.

Q. Could you describe that man you saw?

A. No, sir.

Q. How close were you to him?

A. Well, I was in about 7 feet of him.

Q. I am speaking of the one that crossed the bridge shortly after the train left.

A. Yes, sir.

Q. You were not near enough to him to recognize him?

A. No, sir.

Q. You did not recognize him by his voice, or anything else, I suppose?

A. No, sir.

Q. All you know is that the man came down there from towards Ft. Gibson, and you talked to him?

A. Yes, sir; I spoke to him. I know that he was in his shirt sleeves; had a bundle; carrying a little bundle.

Q. How many shots did you hear fired there that night did you say?

A. I didn't notice but two shots.

Q. Did you know that anybody was shot?

A. No, sir; not until after the train pulled out; then I didn't know only just what Mrs. Harrison told me; she said she thought somebody was shot.

Q. You did not know it of your own knowledge?

A. No, sir.

Q. Mrs. Harrison is not here, is she? Her husband is here, is he not?

A. Yes, sir.

Q. How far were you from the engine when they left?

A. There was about two-thirds of the express car, and the mail car and the tender between me and the engine.

Q. You could not see very well what went on up there?

85 A. They were right in front of the engine; I could see them.

Q. What did they do?

A. They just marched up there; made the boys hold up their hands; I noticed that; I didn't notice what they did; anything of that kind.

Q. Were they all there when this man hollered "Come on, Joe?"

A. All I noticed there was 5 people there; there wasn't anybody that I knew only the express messenger; I knew he was one of the crowd.

Q. You noticed there was five?

A. Yes, sir.

Q. And the express messenger was one of them?

A. Yes, sir.

Q. They were standing in front of the engine how far?

A. Oh, they were about 50 feet, I should judge.

Q. Standing in the light of the headlight?

A. Yes, sir; right in front of the engine.

Q. Do you know where the engineer and fireman were at that time?

A. No, sir.

Q. Did you see any of them well enough to describe any of these robbers?

A. There was one I could give a tolerable clear description of; that was the one that spoke to me when I got off the top of the coal house down on the ground; he was a man that was a little trifle taller than I was; he had on these brown ducking overalls; was in his shirt sleeves; had a kind of a sandy mustache; and he had on a white hat; I recollect that part of it. The hat had a leather band around it. The inside of the band was white, and the edges of it were red; I noticed that part. It was one of these leather bands I noticed, and the body part of it was white and the edges were red.

Q. Sandy mustache?

A. Yes, sir.

86 Q. Did he have any beard, whiskers?

A. I could not say anything about his beard; I did not notice any beard.

Q. Was his mustache long or short?

A. It was a tolerable long mustache, tolerable heavy.

Q. This was the man you saw first on the east side?

A. Yes, sir.

Cross-examination by Mr. BARNES:

Q. Is that as far as you can describe him?

A. Yes, sir.

Q. He was a tall man, was he not?

A. He was a man that was a little bit taller than I am; I took him to be; we were standing face to face.

Q. How tall are you?

A. I am about 5 foot 9.

Q. I will ask you if you did not state in your former examination in cheif, when you were before the commissioner, that you could not describe any of the men, but that there was one of the men was a tall man, not speaking of him comparatively with yourself, because if you are only five feet 9 you would not speak of a man that was a little taller than you as a tall man?

A. I would speak of him as a little taller than I am.

Q. Did you not state before the commissioner that the man was a tall man, on your examination in cheif. You know what a tall man is?

A. I don't know as I did.

Q. Did you ever speak of a tall man in your life that you did not think of a man at least six feet high?

A. It might have been.

87 Q. You always think of a tall man as a man of six feet or more do you not?

A. I don't know as I do.

Q. You know that is the common acceptation of the term, do you not, that when a man is spoken of as a tall man he is thought to be at least six feet?

A. We might look at it in a different light; I might say that a man five feet ten was a tall man.

Q. Did you state in your examination before the commissioner in this case that you could not describe any of the men, only there was one tall man with a white hat with a leather band. You picked him out because he was tall; you spoke of him because he was tall, and now you tell the district attorney that you did not notice, you could not say whether he had any beard or not, I believe?

A. No, sir.

Q. I will ask you if you did not swear before the commissioner that he did not have any beard?

A. I didn't see any; I said I didn't notice anything but a mustache.

Q. That was a heavy red mustache?

A. Sandy mustache.

Q. I will ask you in further describing that man before the commissioner you did not say this: "Don't think he had any beard; think he had rather dark mustache." Did you state that?

A. If I was going to say anything about beard I would say that he didn't have any.

Q. I have read your testimony as I find it; I will ask you if you said it that way before the commissioner? The first thing I happened to light on here is your description of that man; here is the way it is written: "Could not describe any of the men, only there was one tall man; he had on a white hat with a leather band with red edges on it; don't think he had

any beard; think he had rather dark mustache." That is a very
88 different description from what you have to the district attorney, I think?

A. Not very much, I do not think; he was a man taller than I was.

Q. You now speak of him in comparison with yourself. And then you describe his mustache different. Well, we will pass that for the present, but it seems to me you have got the two things crossways. That is all the man you undertake to describe, or can describe?

A. Yes, sir.

Q. Where did you first bin see him?

A. Right between the coal and the coach.

Q. After you got down off of this coalhouse?

A. Yes, sir; after I stepped down on the ground.

Q. How long were with him on the ground?

A. Not more than a second or two; just long enough for him to speak to me and ask me that question.

Q. You were close to him, in a few feet of him?

A. Yes, sir; we came right up face to face.

Q. Did you see him any more?

A. No, sir.

Q. Where did he go to?

A. He went towards the front of the train, towards the engine.

Q. You were on the east side of the train?

A. Yes, sir.

Q. How close was this coal bin to the bridge?

A. Oh, there is about 10 feet space between the end of the coal bin and the bridge, maybe a little more than that; it is just a narrow space like.

Q. At Gibson you say that you noticed that one of the parties got on the train?

A. Yes, sir.

Q. And at that time the other party attempted to get on and failed; that is, the porter told him to keep off?

89 A. The porter or conductor, I do not know which one it was exactly now.

Q. Are either one of them here?

A. No, sir; I don't think they are.

Q. Now, you say the train was at a standstill at that time?

A. Yes, sir; it was then.

Q. Then he failed to get on because the porter or conductor warned him not to, and then he turned right back?

A. Yes, sir; towards the depot.

Q. How far along was he towards the front end of the train then?

A. He was towards the end of the express car then, about as near as I can tell it.

Q. Then he was not very far from where the other man got on, according to that?

A. No, sir; wasn't very far.

Q. The man that got on, got on, I suppose, right behind the tender?

A. I could not tell you whether he got on behind the tender or behind the mail car.

Q. It was very close there?

A. Yes, sir.

Q. And the other man was close to him, but still didn't get on because he was warned off?

A. Yes, sir.

Q. And the train was at a stop?

A. Yes, sir.

Q. How long after that did you start from there?

A. I was not but a minute or two, as soon as they got their passengers aboard; I don't know how long it was; they didn't stop there but a minute.

Q. Do you think it was as much as five minutes?

A. No, sir; I don't believe it was, because as soon as they got their passengers ready the conductor gave them the signal to pull out.

Q. Do you think 5 minutes was consumed after you saw this man
90 run back there behind the depot?

A. I don't think it was hardly that long a space.

Q. About how long a space?

A. We will say from three to five minutes—three minutes anyway.

Q. Then the signal was given and the train started?

A. Yes, sir.

Q. What was it you said about your rolling out some boxes; where was that?

A. That was taking my tool boxes off the car.

Q. Where was that at?

A. At the tank, right at the coal bin.

Q. How far is it from Gibson Station down to that bridge?

A. It is about, I should judge, a mile and a half.

Q. You can not describe the man you saw go around the depot?

A. No, sir.

Q. You say that he passed along the length of the train and passed behind this house?

A. He didn't pass the length of the train. He walked out from the train to the nearest end of the depot; he didn't go back along the train.

Q. You cannot describe the man you saw passing over the bridge, except he was in his shirt sleeves and had a bundle?

A. No, sir.

Q. He was inquiring for Muskogee; wanted to know if he could get into a wagon road?

A. He was inquiring if there was a wagon road that he could take.

Q. And you say there was a wagon road out that way; that he turned there?

A. Yes, sir; there is a wagon road out that way, but I don't know as it goes to Muscogee.

Q. But there is a wagon road in the direction that he turned?

A. Yes, sir.

91 Q. You were pretty close to that man when he passed you, I reckon, on the bridge?

A. I was within 6 or 7 feet of him, or 8.

Q. There was nothing about his appearance or his features, except being in his shirt sleeves, that you can describe, and having that bundle?

A. No, sir.

Q. Can not tell about his features at all?

A. No, sir.

Q. Can not tell whether this man Holloman here is the same man or not?

A. No, sir.

Q. You did not notice whether he had a beard or mustache or whether he was clean shaved?

A. No, sir.

Q. How close did he pass by you?

A. About 6 or 7 feet. He was walking between the rails.

Q. Now, then, when the conductor or porter, or whoever it was warned this fellow off, I suppose he was pretty close then to the train, and there was no light there, I suppose, except what the train gave?

A. No, sir.

Q. The engine was up in front?

A. Yes, sir.

Q. Still there were lights in all the cars?

A. Yes, sir.

Q. Was there a reflector out anywhere about the station?

A. I could not say as to that.

Q. This man at the bridge passed in 6 or 8 feet of you; you had some conversation with him; it looks like at that time you would have made some observation, had your suspicion aroused, and noticed the man's countenance. If that man had a very heavy beard on you saw him plain enough to know that, didn't you?

A. I don't know whether I did or not?

Q. Don't you think you would have seen it if he had had one?

A. I think if he had had a very heavy beard I think I would
92 have noticed it. If he had a big heavy beard I might have noticed it.

Q. There are not many men who wear full beards now-a-days, are there?

A. No, sir.

Q. You were on the east side, and this man passed you there just before the robbery, passed you on the east side; how long before that was it that you heard the shot?

A. Oh, it was as much as five minutes; maybe a little longer.

Q. As much as five minutes after that before you heard the shot?

A. Yes, sir; it must have been that much time, if not a little longer.

Q. Then, how long was it until you heard the next shot?

A. It wasn't but two or three minutes.

Q. Which was it that you heard the scream?

A. Second shot, back at the coach, is where I heard the scream.

Q. When was it you went up towards the front part of the train?

A. I was going towards the front part of the train when I heard the first shot, and also when I heard the second I was going up that way, too; the first shot I was kind of bleeding the break, when the first one went off.

Q. You never heard but two shots?

A. Not that I could distinguish.

Q. You say you did not see but three men there who were concerned in the robbery?

A. That is all I noticed.

Q. Then I will ask you why you said this before the commissioner, on cross-examination:

The DISTRICT ATTORNEY. That is not the proper way to ask the question.

Mr. BARNES (of counsel for defendant). I stand corrected. I
93 will ask you if you stated before the commissioner, on your cross-examination, first giving your position, "When the shot fired I was right alongside of the baggage car; saw four men there that were supposed to be robbing the train."

A. I don't think I ever gave that.

Q. Well, then, I will just ask you directly if you did not state before the commissioner, "When the shot fired I was right alongside of the baggage car; saw four men there that were supposed to be robbing the train."

A. No, sir; I said I was right alongside the baggage car when I heard the first shot.

Q. What time of night was it?

A. About 9:00 o'clock.

Q. What day of the month was it?

A. From the train sheet and the records we have it was the 15th of June, 1888.

Q. You have learned that since you swore before, have you?

A. Yes, sir; because I didn't know before; I didn't have anything to go by.

Q. As far as you are concerned somebody might have been hung on your testimony for killing a man on the 16th of June; did you state before the commissioner it was the 16th of June, 1888?

A. They asked me this question, the commissioner did, where I was on the night of the 16th of June, or at the time this robbery was committed.

Q. I expect that was the first thing he asked you. In your cross-examination, after stating that there were four men, I will ask you if you didn't next say it was about 9:00 o'clock at night of the 16th of June, 1888?

A. They asked me this question: Where I was on the night of the 16th of June, 1888, or the night this robbery occurred.

94 Q. I will ask you, in your cross-examination, if you did not just state broadly in that way that it was the 16th of June, 1888?

A. I don't recollect of him asking me that question. If he had I know I wouldn't have answered it that way, for I wasn't certain.

Q. Did you answer it that way?

A. I answered I was at Verdigris tank the night of this robbery.

Q. Did you answer, when you were asked by the attorney for the defendant on your crosss-examination before the commissioner, that it was 9:00 o'clock at night on the 16th of June, 1888, when this robbery of the train occurred?

A. I don't think I put the 16th of June to it at all; it was about 9:00 o'clock at night, because I looked at my watch.

Q. It is written in the way I have read it. You know that this case first started upon the theory that it was the 16th of June, don't you? Ain't that why you answered that way?

A. That is what the commissioner asked me—where I was on the 16th of June or the night this robbery was committed.

Q. The commissioner wasn't cross-examining you?

A. Another thing; they asked me what night of the week it was, and I told them, because I was certain of that.

Q. You were certain it was Saturday night?

A. I was certain it was Friday night; I said it was that night, too, I guess.

95 G. W. HARRISON, having been duly sworn, was called upon behalf of the Government, and being examined by the district attorney, testified as follows, to wit:

Q. I believe your name is G. W. Harrison?

A. Yes, sir.

Q. You were the pumper at the tank, were you not, at Verdigris bridge?

A. Yes, sir.

Q. On the M. K. & T. R. R.?

A. Yes, sir.

Q. Where were you on the night of the 15th of June, 1888; that is, where were you on the night that the train was robbed there at that tank, in June, 1888?

A. I was there at the pump house.

Q. Where did you live?

A. I lived right there in the pump house.

Q. What is the first thing that you discovered after the train came in? Go on, and tell all about it.

A. When the train pulled up there, there were some tools to be put off for the pump repairer. He was coming there to do some work, and they made a stop and got off one box, and they started up again, and I got the next box off on the ground; the first one I got off on the coal shed. When they stopped again I supposed there was something the matter with the engine, and I started up there to see, just for curiosity sake. I had not taken but a step or two until there was a shot fired, and I made the remark, "A shot in the dark might hit something," and went still a few steps further, and there was another shot fired. I made the remark, "I am not going up there now; the damned fools shooting around in the dark might hit somebody," and I turned around to come back, and

96 somebody hollered, "Hold on, there; stay where you are." I was going free and leisurely along, and didn't think about their hollering at me. I looked around, then, for the pump repairer that was with me, and he was standing back there where they had told him to stop, and I got very near to the hind end of the baggage car, and I heard running on the other side of the car from me, and I stooped down and looked to see what that was, and just about the time I was straightening up again I saw there was a man on the other side. When I looked under I saw there was a man on the other side with a gun running along. About the time I really got straightened up again I heard, "Get back, there, God

damn you." There wasn't more than "Get back" until there was a shot fired. I supposed that the words, "Get back" mean me, and I started to get back, but didn't have time to take a step hardly until the shot was fired. Then I jerked out my lantern.

Q. Jerked it out; what do you mean?

A. Put it out that way (indicating by a short, quick drop). That is the way a railroader puts out his light generally.

Q. You had a light with you?

A. Yes, sir; I had a lantern up to that time. I realized then what was going on. Then I went from there into the house, back right out again, took what money I had in the house and went out and put it away.

Q. Hid your money?

A. Yes, sir. Didn't have very much of it, but I thought I would take care of it; of what I did have.

Q. Where did you hide it?

A. Out in the potato boxes, about 60 feet from the house.

Q. Suppose the fellows had gone after some potatoes, what would you have done then?

97 A. I took my chances on that. I suppose they would have found it if they had.

Q. What occur'ed after you hid your money in the potato box?

A. After I hid my money there I came back to the house again, and there was this man that had the gun on the other side, or a man anyhow, came then and stood on the end of the bridge abuttment, and my wife was abusing him very hard, in her way of doing it, for the shooting into the car. I did not like the way she was talking much, and I tried to get her to go into the house and she would not go. I tried that for quite awhile; finally left myself and thought she would come. I went back to where I had this money, took my shotgun and revolver, and thought I would stay there and watch it.

Q. Then what?

A. I staid there until the train pulled away.

Q. That was about 60 feet from the house?

A. Yes, sir.

Q. Did you hear any holloing or anything back at the train while you were there?

A. Yes, sir. Just before the train started some fellow hollered, "Hey, Joe; Hey, Joe," two or three times. I would not say positive whether it was more than two times, as though they were calling some one.

Q. That, you say, was just before the train started?

A. Yes, sir.

Q. After the train left, what did you do?

A. After the train left I took my money, went in the house, and went to bed. At first I was out on the track quite a little bit; there were five of us there on the track. While we were laying there there was a man came down the track.

Q. From what direction.

A. Came from the north.

Q. From towards Gibson?

A. Yes, sir.

98 Q. What occurred between you and him?

A. I didn't know him; he was a stranger that made the remark to him, some one of the party, but I don't remember who it was made the remark first, asked him if he was travelling; he said, "Not much." Says, Aint you afraid to be going down here after night? He says, "Guess not." Says, "Better be; there was a train held up here just now." He made the remark that they would not get much from him, only his old clothes. He asked if there wasn't a wagon road, thinking that he had better probably take that. I told him that he had better keep the track; that whoever done the robbing was liable to be on that wagon road; he didn't know but what he better had, and he started down the track, and I lay down low on the track so I could see, and he left the track about opposite of the tank, turned off west; that was the last I seen of him.

Q. Going which way?

A. Going west; he left on the west side; I could not say where he went after that.

Q. He left on the right-hand side as you go south?

A. Yes, sir.

Q. Why did you put your head down on the track and watch him?

A. Just simply a remark was made by one of the party——

Mr. BARNES (of counsel for defendant). I object to that.

The DISTRICT ATTORNEY. Did you have any suspicion? Is that the reason——

A. I wanted to see where he went to.

Q. You watched him and found that he went to the right?

A. Yes, sir.

Q. Were you down there next day out in that brush?

A. Yes, sir.

Q. Did you see any tracks or signs, anything of that kind?

99 A. No man tracks that I could see; there were paths throughout there.

Q. Did you see any signs where horses had been hitched out there?

A. Yes, sir.

Q. Where?

A. Out there about, I suppose, 20 yards from the tank.

Q. On which side of the road?

A. On the west side.

Q. What kind of a place was it where they were hitched out there?

A. Little open spot in the brush, jack-oak trees, where horses had been tied.

Q. What kind of a looking place was it? How did you know that horses had been tied there?

A. Saw where they had been stamping around and manuring.

Q. Could you tell anything about whether they were fresh or old?

A. No, sir; because there is very often horses hitched in that brush there.

Q. Did you take the track?

A. No, sir.

Q. Could you tell anything about how many horses had been hitched there?

A. No, sir; could not tell.

Q. What kind of a looking man was this man you saw coming down the track, or could you tell anything about it?

A. I could not tell anything about it.

Q. That tank is on the left-hand side as you go down south?

A. Yes, sir.

Q. With regard to the firing of the shots, how many shots did you hear fired altogether?

A. Three.

Q. Did you see any of them fired?

A. No, sir; nothing, only the flash of them.

100 Q. Did you see the flash of them all?

A. I saw the flash of three.

Q. Which side of the track were they shot on; could you tell?

A. Two from the east side and one from the west.

Q. How many men did you see of these robbers?

A. I don't know whether I seen any robbers or not; I seen the men there.

Q. Well, how many men did you see there you did not know, who you supposed to be robbers?

A. Three.

Q. Where did you see them?

A. I seen two of them on the east side of the track and one on the west.

Q. You have told what the one on the west was doing; he was slipping along with a gun, going towards the rear.

A. Yes, sir.

Q. What were the two on the other side doing?

A. They were at the express car when I saw them.

Q. Were these the two that got in the express car, or do you know?

A. One of them did; I don't know whether the other one did or not; I seen one of them in the express car.

Q. How far down towards the engine did you go?

A. I went to the end of the baggage car next to the engine; the length of the baggage car from the smoker.

Q. The baggage car is behind both the mail and express car, is it not?

A. Yes, sir.

Q. Further north?

A. Yes, sir.

Cross-examination by Mr. BARNES:

Q. How close is the house you lived in to the bridge? Did

101 you live there at that place?

A. Yes, sir.

Q. Where is that house located?

A. It is located on the east side of the track; I would judge ten or twelve feet from the bridge, diagonally across; it is not that far lengthways, but a near cut from the corner of the house to the bridge is *is* not over twelve feet.

Q. As that train stood there while it was being robbed, part of it was opposite to you, was it not?

A. I suppose it was, half of it; the far side was opposite.

Q. Did you stay on one side all the time?

A. Yes, sir.

Q. That was the east side?

A. Yes, sir.

Q. There was a man came and stood on something you named there, opposite to you, about the bridge there?

A. Stood on the west side of the bridge, on the abutment.

Q. You staid on the east side all the time?

A. Yes, sir.

Q. On that east side, now, you saw the flash of two shots and heard the report of two shots?

A. Yes, sir.

Q. Were they the first two shots fired?

A. They were the first two shots that were fired, and they were on the east side.

Q. You heard screaming at that second shot, did you?

A. Yes, sir; just after it.

Q. From the east side?

A. No, sir; I didn't say it.

Q. You came near saying it when you said that the first two shots were from the east side, and you said you heard screaming at the second shot.

A. I said the shot from the west side I heard the screaming.

Q. You said you heard the screaming at the second shot.

A. Have it your own way.

102 Q. I will leave that to the jury. I never heard anything clearer in my life in the way of an answer than you answered that you heard the screaming at the second shot. How much time did the robbing of this train cover?

A. The time would appear longer than it naturally was, under the circumstances; I would judge, though, it was from 20 to 25 minutes altogether.

Q. How long had the train been gone when this man came walking across the bridge?

A. Probably half an hour or three-quarters; of course, I didn't time him exactly.

Q. It was a mile and a half, I believe you say, from the bridge back to Gibson Station?

A. It is two miles; I never said before.

Q. Everybody else has said it was a mile and a half.

A. I don't know what everybody else says, I say it is two miles.

Q. How long had you been there at the time he come there?

A. Since the 12th day of August, 1887.

Q. Are you there yet?

A. No, sir; I am here now; I am working there.

Q. I mean, are you living there yet?

A. Yes, sir.

Q. You said 'while ago, I believe, that it was a common thing for people to come and hitch their horses about there?

A. Yes, sir.

Q. Why was that?

A. Because they could hitch there and walk over the bridge to the town.

Q. On that account a good many people hitched their horses around there in that timber?

A. Yes, sir; they generally came a little closer to the bridge.

Q. Still you say this place where you noticed about the hitching and the signs was only about 20 steps from the tank?

A. About 20 or 25 steps, somewheres along there; I didn't

103 measure it; just out in the brush a little *peice*.

Q. Are you familiar with the country right around there on the side you live on?

A. Yes, sir; for a little piece; not far.

Q. Any of it in cultivation around there?

A. Yes, sir; there is about 8 acres in cultivation right there at the tank on the west side, about an acre and a half or two acres on the east.

Q. Was there strips of timber there on each side at the time of this occur'ence, close to the railroad track?

A. There was brush on each side; there was right at the tank.

Q. How close up on the west side did this cultivated *feild* come?

A. I should judge two hundred feet from the track.

Q. At that time was that field there?

A. Yes, sir.

Q. Came up within 200 feet of the track, that 8-acre *feild* you speak of?

A. Yes, sir.

Q. How was it on the other side?

A. About an acre and a half or two acres, somewheres along there.

Q. How close up to the track did that come?

A. That came right up to the track—that is, it came up within about 10 feet to the fence.

Q. Did that fence run close to the bridge?

A. It run from the pump house within 20 or 30 steps of the tank at that time; it runs past the tank now; it didn't then.

Q. On that side you say there was this wagon road and path, after you got out a *peice* from the bridge?

A. Yes, sir.

Q. On that side where the 8-acre field was, how near was the next nearest cultivated field?

A. About a mile.

104 Redirect examination by the DISTRICT ATTORNEY:

Q. You think it was two miles to Gibson?

A. Yes, sir.

Q. You have been living there since 1887?

A. Yes, sir; came there the 12th day of August, 1887.

Q. Been living there ever since?

A. Yes, sir.

Q. Do you know what it is called by the people who live there, or have you ever heard people say, the distance to Gibson Station?

A. It is called two miles.

Q. This 8-acre field lay upon the west side of the track and south of the river, did it not?

A. Yes, sir.

Q. And about 200 feet from the track?

A. Yes, sir.

Q. Was there brush and woodland between?

A. There was through about half of the field; the field is narrow; it runs a strip right up the river.

Q. The railroad runs right across the river, and this 8 acres lays in a strip right up the river?

A. Yes, sir.

Q. How long is the east side of that field, the next side to the railroad, or the end next to the railroad; how was it at that time?

A. About 160 yards across the east end of it.

Q. That is, from the river to the south line?

A. Yes, sir.

105 J. T. HOLLAMAN, having been duly sworn, was called upon behalf of the Government, and being examined by the district attorney, testified as follows, to wit:

Question. What is your name?

Answer. James T. Hollaman.

Q. Where is your home?

A. In Texas, Rogers Prairie.

Q. Do you know the defendant, Alexander Lewis, in this case?

A. Yes, sir.

Q. Where did you live in the early part of 1888?

A. After April I lived at Rogers Prairie.

Q. Where is that?

A. In Texas.

Q. What county?

A. Part of it is in Leon, and part of it in Madison.

Q. When, if you did, did you leave Texas to come to the Indian country?

A. 20 day of April.

Q. Who went with you?

A. A fellow by the name of Johnson.

Q. Did you know a man by the name of R. T. Rogers there?

A. Yes, sir.

Q. Is he any relation of yours?

A. Yes, sir; cousin.

Q. Is Johnson any relation of yours?

A. No, sir.

Q. What is Johnson's given name?

A. He said his name was Jim Johnson.

Q. How long had you known him before you went up in the Indian country?

A. But a short time.

Q. You and Johnson went together?

A. Yes, sir.

Q. Had you seen Rogers before you left?

A. Yes, sir.

106 Q. Please state if you had any understanding with him as to whether he was to come out into the Indian Territory, Rogers. Did Rogers come up in the Indian Territory?

A. Yes, sir.

Q. Did he go with you?
A. No, sir.
Q. How did he go?
A. On the train.
Q. From where?
A. He taken the train at Calvert, I think.
Q. Were you with him when he took the train?
A. No, sir.
Q. Just simply understood he was to take the train there?
A. Yes, sir.
Q. What were you to go to the Indian country for?
A. We were told by Mr. Johnson we could get good wages there working at stock.
Q. How long had Johnson been in the country?
A. He had been there about three weeks, as well as I remember.
Q. Did you have a crop down there in Texas?
A. Yes, sir; I did.
Q. What did you do with it?
A. Sold it out; we were making a crop together.
Q. In the spring, beginning of the year?
A. Yes, sir.
Q. What was it a crop of?
A. Cotton and corn.
Q. When did you gather it?
A. We did not gather it; we sold it to a man named Atkins.
Q. How much did you get for it?
A. $125.00.
Q. You and who sold it?
A. Me and Rogers.
Q. What part of Texas were you in?
A. You might call it southern Texas.
Q. How far from San Antonio?
A. I don't know the exact distance; it is somewheres about, I expect, 200 miles, or further.

107 Q. It was in southern Texas?
A. Yes, sir; in southeastern Texas, you might call it.

Q. Now, then, passing by all your further arrangements down there in Texas, you and Jim Johnson went up to the Indian country together?
A. Yes, sir.
Q. Where did you meet Rogers there?
A. At Pryor Creek Station.
Q. Had you seen the defendant, Lewis, before that?
A. Yes, sir.
Q. Where had you seen him?
A. I saw him at his house.
Q. You and Jim Johnson went to Lewis's house, did you?
A. Yes, sir.
Q. How did you go?
A. Went horseback.
Q. Please state when you got to Lewis's house.
A. I don't remember the exact date, what day of the month or week, it was.

Q. About what time?

A. Well, we were somewhere about a month—it must have been somewhere about the 20th of May, I guess, or a little over.

Q. Who did you find there at Lewis's house when you got there?

A. We did not find anyone there but his wife and children.

Q. Did you make any inquiry of her?

A. Johnson inquired if Queen was in; she told him he was not; she had not seen him.

Q. Where did you go then?

A. We started from there and went on across the creek, I suppose half a mile; we met Queen there on the prairie.

Q. Did you know Queen?

A. No, sir; that was the first time I had ever seen him.

Q. Were you introduced to him?

108 A. I was introduced to him by Buck McKitchin.

Q. Who introduced you to him?

A. Johnson.

Q. What name did he introduce you under?

A. Joe Foster?

Q. Why was that?

A. He just introduced me by that name; there was never nothing said about it before. I never said a word.

Q. What did you do then?

A. Went around back to Lewis's house.

Q. Who?

A. Johnson, Queen, and myself.

Q. How long did you remain there?

A. We staid there until the next morning, when we got on our horses and went to old man Barber's.

Q. Did you see Lewis?

A. Yes, sir; he came home that evening.

Q. About what time?

A. I suppose about sundown.

Q. Did you get an introduction to him?

A. Yes, sir.

Q. Who introduced you?

A. Queen.

Q. By what name?

A. Lewis; he introduced me to him as Lewis, and myself as Foster.

Q. Did he introduce Jom Johnson by any other name?

A. No, sir.

Q. You didn't know Queen or Lewis up to that time?

A. No, sir.

Q. You staid there all night, and the next morning you went where?

A. Went from there to old man Barber's.

Q. Who did?

A. We started to old man Barber's——

Q. Who did?

A. Queen, Johnson, and myself. We got in about a mile of

109 there, I reckon; somewheres there, of old man Barber's, and they told me to go and stay all night at old man Buck Dawson's; they would be crowded at Barber's.

Q. How far is that from Lewis's?
A. I suppose it is somewheres about 25 miles; I don't know the exact distance.
Q. How far is Dawson's from Lewis's?
A. I am talking about Dawson's; about 25 miles.
Q. Does Dawson live that far from Lewis's house?
A. I suppose that far, about; I don't know the exact distance.
Q. Is there any other Dawson there that lives there?
A. There is a man named Will Dawson.
Q. How far does he live from Lewis's?
A. About two miles, I guess; maybe a little more.
Q. Old man Dawson about 25?
A. Yes, sir.
Q. How far did Barber live from Dawson's?
A. About a mile and a half.
Q. You staid all night at Dawson's, and then next morning where did you go?
A. I went from there over to old man Barber's.
Q. Did you find Queen and Dawson there?
A. Yes, sir.
Q. Who else did you find there?
A. Didn't find anybody but his folks' family.
Q. Did you know John Barber?
A. I never seen him until a short time after that.
Q. He wasn't at home at that time?
A. No, sir.
Q. Did you learn anything from your Cousin Rogers at that time while you were there?
A. I went then to strike him at Pryor Creek.
Q. How came you to go to Pryor Creek?
A. They told me there that he was at Pryor Creek.
110 Q. You learned that he was there and went there?
A. Yes, sir.
Q. Where did you find him?
A. Pryor Creek Station.
Q. Where is that?
A. I don't know how far it is; it is, I think, on the M., K. & T. road, if I am not mistaken.
Q. Where was Rogers?
A. He was there at the hotel.
Q. How long did you remain there with him?
A. We staid there all night.
Q. Then what became of you?
A. Then he took a train and went round and came down to Chelsa, I believe was the name of the station.
Q. How did you go?
A. I went on horseback.
Q. Where did you go then?
A. Went from there to Barber's.
Q. Who did you meet there?
A. Johnson and Queen and Barber's folks.

Q. Anybody else?
A. Nobody but Barber and his family.
Q. When did you first see John Barber?
A. It was after everything was over with.
Q. John Barber had't come home yet?
A. No, sir.
Q. There was Queen, Rogers, Johnson, and yourself, was there?
A. Yes, sir.
Q. What became of you after that?
A. We went from there back down to Lewis's.
Q. To the defendant's house?
A. Yes, sir.
Q. How long did you stay there?
A. We staid there I reckon some four or five days, I supposed.
Q. Well, now, go on; while you were there at Lewis's, if there was any conspiracy to rob this train upon the M., K. & T., I want you to commence there and tell all about it; you say you staid there at Lewis's some four or five days; who was there?
111 A. Lewis, Queen, Johnson, Rogers, and myself.
Q. Five of you?
A. Yes, sir.
Q. That is how you five got to Lewis's, is it?
A. Yes, sir.
Q. When did you learn to call him Queen? He was introduced to you as Buck McKitchen?
A. Lewis called him Queen all the time.
Q. Johnson, Queen, Rogers, that is three, yourself four; now, what time was it that you all got there? How long before this robbery when you and Rogers and Johnson went down to Lewis's and found Queen and Lewis there? About how long before the robbery?
A. I suppose it was some week or so, maybe two weeks, I don't recollect exactly.
Q. What did you do there?
A. We were down at the hay pen at Lewis's.
Q. Was Lewis with you?
A. Yes, sir.
Q. Now, were you all there?
A. Yes, sir; all five of us.
Q. Go ahead, now?
A. Johnson, he remarked we were getting a little scarce of money, and he said we had to have some money some way, and he proposed this M., K. & T. robbery.
Q. Johnson was the man who made the proposition?
A. Yes, sir.
Q. Go ahead.
A. And we all finally agree, and Lewis said he wanted to go himself, and if his wife would agree he would go, and if she did not he couldn't.
Q. That was the defendant, Alexander Lewis, here?
A. Yes, sir.
Q. You all agreed you would go into this robbery?
A. Yes, sir.

Q. What time of day was that, now?
A. That was in the morning.
Q. Then what?
A. Lewis went off to the house.
Q. Left you men at the haystack?
112 A. Yes, sir; he went to the house and we all got to playing seven-up to see who would go up to Gibson to ride the engine down.
Q. Who were partners in the game?
A. Queen and myself, Rogers and Johnson.
Q. Who got beat?
A. Queen and myself got beat.
Q. You got stuck?
A. Yes, sir.
Q. You and Queen were to ride the train down?
A. Yes, sir; we played another game to see who would get in the express car, and Rogers and Johnson got beat that time.
Q. That is the way you determined what each should do?
A. Yes, sir. And then we went on up to Lewis's house, and he told us this, that his wife was willing, and he would go.
Q. Please state if you had any arms at that time? If so, how did you get them?
A. I had a six-shooter, and Johnson had two, I believe; Queen one and a Winchester, and we went back up to old man Barber's before that and I went to Coffeyville and got a couple more Winchesters.
Q. That made three Winchesters altogether?
A. Yes, sir.
Q. Who had the Winchester before the new ones were bought?
A. Queen had one.
Q. Then they sent up to Coffeyville and got two more?
A. Yes, sir; Rogers bought the old one from Queen, the one he had, when we got there, and Queen and Johnson sent to get them one apiece at Coffeyville.
Q. Who did they send?
A. They sent me.
Q. What other preparations did you make, if any, for the robbery?
A. After I got back with the guns we went back down to old
113 man Lewis's, the defendant's, and Queen and Johnson then went off after a couple of horses.
Q. Where did they get them, do you know? Do you know where they went to get the horses?
A. I think they went over there somewheres, across Grand River I think it is; somewhere over there.
Q. What two horses did they return with?
A. They returned with a paint mare and a bay horse.
Q. Do you know whether these horses were stolen or not?
A. I didn't at the time?
Q. Did they say anything about their being stolen?
A. No, sir; never said a word.
Q. Who was it that returned with them?
A. Queen and Johnson.

Q. Was there any preparation made for eating? Did you make any preparations to take any food with you?

A. Yes, sir; when we started off Mrs. Lewis fixed up some grub*b* to carry with us.

Q. Now, then, you may go on and state what horse you rode.

A. When we started I started riding a roan horse, split-eared, one ear split a little.

Q. What did Lewis ride?

A. An iron-gray horse—that is, he rode him to Tulsa.

Q. What did Rogers ride?

A. He rode a bay horse, big bay horse.

Q. What did Queen ride?

A. He rode the paint mare part of the way; Johnson, he rode a bay horse.

Q. You say that Lewis rode a gray?

A. Yes, sir; he started on a gray, and rode him to Tulsa.

Q. Now then, explain that; how you all went?

A. Lewis got on his horse; Rogers with him to Tulsa.

114 Q. What was that for?

A. Lewis was going around on the train.

Q. Why?

A. He said they might suspicion something, and he told them all he was going off on a visit around to look him out a place.

Q. Rogers took him to Tulsa?

A. Yes, sir.

Q. With what understanding?

A. That he was to meet us at Gibson station.

Q. When?

A. The next day.

Q. Where were you when Rogers and Lewis started to Tulsa?

A. We were at Lewis's.

Q. How far is it from Lewis's to Tulsa?

A. It is, I suppose, a mile and a half or two miles.

Q. When did Rogers return?

A. He returned that morning.

Q. What became of Lewis's horse?

A. We carried him with us.

Q. Did Rogers bring it back?

A. Yes, sir.

Q. Then you all started?

A. Yes, sir.

Q. How did you all go?

A. We went horseback.

Q. Who le*a*d the horse?

A. First one and then another; no particular one.

Q. Four of you on horseback with one le*a*d horse?

A. Yes, sir.

Q. Saddle and bridle on it?

A. Yes, sir.

Q. Where did you go to.

A. We went from there—we stopped at Wagoner, or close to Wagoner, and got some canned goods there; we eat dinner there; we went down the railroad close to Gibson; we didn't go right to the town.

115 Q. Where did you go?

A. We were out west of Gibson, I suppose half a mile, maybe a little further; something about that.

Q. From there where did you go?

A. Stopped there and sent out after Lewis; staid all night there.

Q. Did you get Lewis?

A. Yes, sir.

Q. Who went for him?

A. Rogers.

Q. Where did he go to?

A. Gibson station.

Q. Take a horse or go afoot?

A. Took his horse.

Q. He got Lewis; what did you do?

A. He came back there, and next morning we went across the Verdigris; we crossed the Verdigris down at the rocky crossing, I believe they call it. Then we took down the river on the other side; went down close to the bridge, camped, and staid there all that day.

Q. What were you doing there that day?

A. Playing seven-up.

Q. Now, name the men who were there playing cards?

A. There was Queen and myself, and Lewis and Johnson, was playing cards; Rogers was not playing, but he was there.

Q. You five men were there?

A. Yes, sir.

Q. What arms did you have?

A. We had three Winchesters and a six-shooter apiece.

Q. You say it had been decided by this game of cards up at Lewis's that you and Queen would come down on the train?

A. Yes, sir.

Q. How far is it from Lewis's to the place where this robbery occurred?

A. I don't know the exact distance. I was never in the country before; I suppose somewhere about 40 miles; maybe a little more, or hardly so far; I could not tell the exact distance.

116 Q. Forty miles, more or less, you will say?

A. Yes, sir

Q. What was the object of you men going there? What did you go there for?

A. We went there to rob that train.

Q. You say that you and Queen were to go up to Gibson and ride the train down?

A. Yes, sir.

Q. State whether or not you went?

A. Well, about dark, it wasn't quite dark, Queen and myself went up to Gibson——

Q. Hold on. You and he started up about what time?

A. It was about dusk.

Q. Now, then, what were the others to do?

A. The others, when they heard the train whistle at Gibson, they were to go up and capture the pumper and the crowd that was there?

Q. Then what?

A. They were to keep them until the train got there?

Q. Then what?

A. And they were to go through the express.

Q. Who was to go into the express train?

A. Johnson and Rogers.

Q. What was Lewis to do?

A. He was to guard the train.

Q. That was the understanding when you left there?

A. Yes, sir.

Q. Now state if you went up to Gibson?

A. Yes, sir; Queen and myself went up to Gibson.

Q. How did you go?

A. We walked; started about dusk.

Q. You led a horse down there for Lewis, you say?

A. Yes, sir.

Q. What had become of him?

A. We took him to Gibson, and he rode him out to the camp that night, and the next day he rode him over the Verdigris to the camp.

Q. Did you know what time the train was due at Gibson?

117 A. I think it is somewhere about 7:00 o'clock or little after.

Q. You went up to Gibson; go on and state what occurred there.

A. We lay around there some five or ten minutes before the train got there after we got there, and the train came and we crossed over the steps—platform—between the cars and was going down on the west side and the train started and was*m* running and Queen got on, and they hollered, "Get off of there," the conductor did, and I didn't get on.

Q. It passed on then with Queen on and you off at Gibson?

A. Yes, sir.

Q. You are the man who did not get on the train at Gibson?

A. Yes, sir.

Q. What did you do after the passenger left?

A. A freight pulled in right after it, and I walked on down the track after the freight left. After the passenger went on and the freight I then walked on down across the bridge, and there was some parties at the bridge as I went across, and they asked me if I was not afraid to be walking there alone, and I told them I didn't suppose anybody would bother me; they said the train had been robbed.

Q. Then where did you go?

A. I walked then on down to the tank.

Q. Did you have anything carrying it with you?

A. I had my coat tied up in a red bankerchief, carrying it on my arm.

Q. You were in your shirt sleeves then?

A. Yes, sir.

Q. Where did you go?

A. I went down to the tank; got right opposite the tank and turned to the right and got on my horse.

118 Q. You had left your horse there?
A. Yes, sir.
Q. Who did you find out there?
A. Nobody at all.
Q. You found your horse there?
A. Yes, sir.
Q. Found him where you had left him?
A. Well, he had moved about 8 or 10 feet from where I left him hitched; they had moved him.
Q. What did you do then?
A. Got on him, rode about 6 or 8 miles.
Q. Going where?
A. I started back in the direction, I thought, of Tulsa.
Q. Where had you started to?
A. To Lewis's.
Q. How far did you ride before you camped?
A. About 6 or 8 miles.
Q. Where did you camp?
A. Right on the side of the road.
Q. Next morning what?
A. Next morning I got up and struck out, inquiring my way for Tulsa. I rode on until I got near Tulsa and turned to the right up near Lewis's.
Q. What time did you get to Lewis's?
A. Somewhere about sundown.
Q. Who did you find there, if anybody?
A. Lewis, Johnson, Queen, and Rogers.
Q. You found them all there?
A. Yes, sir.
Q. Did you have any talk with them?
A. Yes, sir. They asked me why I didn't get on, and I told them they were running too fast and the conductor hollered at me.
Q. Did you ask them what they got?
A. Yes, sir; and they said they got $8.75 and a gold watch.
Q. Did you see the watch?
A. Yes, sir.
119 Q. What kind of a watch was it?
A. Small lady's gold watch.
Q. Did you have any talk with Buck about it?
Objected to.
The DISTRICT ATTORNEY. I admit that I have no right to ask the question; I recall it. (To witness.) Was Lewis there when you had this talk with this man?
A. Yes, sir.
Q. Did you have any talk with Queen, in Lewis's presence, about getting on the train and what he did there?
A. Yes, sir; all the whole crowd there together.
Q. He said what about it?
A. He asked me why I didn't get on the train, and I told him it was running too fast, and the conductor hollered at me, and I didn't get on.
Q. Did they say anything about what Queen did when he was on the train?

A. He said he held them up.

Q. Did he tell you about any conversation between him and the engineer and fireman?

A. He said the engineer asked him his name, and he said he told him his name was Captain Buck, and the engineer remarked to him that he had got everything down pretty fine for one man to capture an outfit.

Q. Did you have any talk with Lewis?

A. Yes, sir.

Q. What did he say about it?

A. He said he guarded the west side of the train, and he said some fellow stuck his head out, he thought it was the porter, and he hollered at him to get back, and he didn't, and he shot at him, and he said he thought he hit him; he heard somebody holler; and then he said in a day or so after they went down to Tulsa and they heard of a man being killed on the train that night.

Q. How is that?

A. He said he went down to Tulsa then in a day or so, and
120 he heard of a man being killed, and he reckoned he must have done it that night.

Q. When was that conversation?

A. It was a day or so afterwards, after I met them.

Q. That was not the same day you met them?

A. No, sir; not that he told me about the man being killed.

Q. Where were you when he told you about that?

A. At his house.

Q. How long did you remain at his house?

A. We camped there that night, right there across the creek in the bottom.

Q. You didn't stay at the house?

A. No, sir.

Q. Did Lewis stay at the house?

A. No, sir; he staid with us out in the woods.

Q. Go ahead.

A. And the next morning we went from there over to Will. Dawson's.

Q. How long did you stay at Dawson's?

A. All that day and that night and the next day; staid two days, one night.

Q. When was it you had this conversation with Lewis?

A. The next morning after we went over to——(witness pauses).

Q. Was it at Dawson's, or his house?

A. It was at his house.

Q. It was at his house, was it?

A. Yes, sir.

Q. You staid all night in the woods; where did you get your breakfast next morning?

A. At Lewis's.

Q. What morning was that?

A. Sunday morning.

Q. You got home on Saturday evening, then?

A. Yes, sir.

Q. Did you get home the next evening after the robbery?

A. Yes, sir.
Q. The robbery, then, was on Friday?
A. Yes, sir.
Q. You got home Saturday evening, laid out that night, and the next morning was Sunday morning, and you took breakfast at
121 Lewis's?
A. Yes, sir.
Q. Now, then, from there the next day you saw you went to Dawson's?
A. Yes, sir.
Q. Which one of the Dawsons?
A. A. Will. Dawson's.
Q. The one that lives about two miles from there?
A. Yes, sir.
Q. Not the old man Dawson's?
A. No, sir.
Q. How long did you stay there?
A. We staid there Sunday, Sunday night, until Monday evening.
Q. Then where did you go——
The COURT. I would like to know in that connection if they were all together there at Dawson's?
The WITNESS. Lewis didn't go.
The DISTRICT ATTORNEY. Did he go to Dawson's at all?
A. He came there Monday.
Q. He wasn't there Sunday?
A. No, sir.
Q. Then what did you do?
A. We all played cards there, all day Monday—that is, three of *is*.
Q. Where did you go from there?
A. To Barber's. We staid there at Barber's, I reckon it was two days.
Q. Who staid there?
A. Johnson, Queen, Rogers, and myself.
Q. Lewis was not there with you at Barber's?
A. No, sir.
Q. Where did you go from there?
A. Back down to Lewis's.
Q. How long did you stay at Lewis's then?
A. We staid there I reckon two or three days.
Q. Was that the time now that he talked to you about this matter?
A. Yes, sir.
Q. What was it now that he said about it?
A. He said he went down to Tulsa, and he heard of a man be-
122 ing killed; he said he reckoned he must have done the shooting.
Q. Anything else?
A. He said he heard a woman scream, he thought, in the train; and the newsboy, whoever it was standing out there, he said he thought he hit him.
Q. Did you hear Johnson say anything about it in his presence?
A. Johnson made the remark and said, "That's what makes a man a desperado, killing a man."
Q. While you were at Dawson's, please state if there was any card-playing going on.

A. Yes, sir; Lewis, Johnson, and Queen were playing cards.

Q. Did you see anybody while you were at Dawson's?

A. Yes, sir; there were three cowboys, I believe, came in there during the time we were there.

Q. What made you leave Dawson's?

A. Dawson went to Tulsa after some flour and meat, and came back and reported the town was full of marshals, and he would rather we would go out somewheres else.

Q. Then it was that you left and went to Barber's?

A. Yes, sir.

Q. What became of Lewis when you left Dawson's?

A. I don't know, sir; I guess he went back home; he left us.

Q. Where did you go then after you had seen Lewis the second time? Where did you go after that? What became of you?

A. We went back then to Barber's.

Q. Who went with you?

A. Johnson, Queen, and Rogers.

Q. And yourself?

A. Yes, sir.

Q. Lewis did not go with you?

A. No, sir.

Q. Where did you go then from there?

A. Went back to Barber's, and staid around there.

123 Q. How long?

A. I don't know, sir; it was some two or three days.

Q. Then where did you go?

A. Then Queen, Rogers, and myself started to Coffeyville.

Q. What became of Johnson?

A. We left him at Barber's.

Q. What were you going up into Kansas for—to Coffeyville?

A. They had made a plot to go over into Missouri—to Senneca.

Q. What for?

A. To rob the bank, and we were going up there after horses.

Q. You went up towards Coffeyville; what became of your horses?

A. We got up there; I suppose it is some 8 or 10 miles from Coffeyville; we stopped there and eat dinner, and Rogers turned his horse loose; I was riding one of Barber's, and I turned him over to Queen, and he carried it back home.

Q. What horse did he turn loose?

A. A bay horse.

Q. What became of the paint horse?

A. I shoved it across the Verdigris River?

Q. When?

A. Some week or two before that.

Q. Was that before you borrowed *b*Barber's horse?

A. Yes, sir.

Q. You put it across the Verdigris river?

A. Yes, sir.

Q. What became of the saddle and bridle of Rogers when he turned his horse loose?

A. Left it in the bottom hanging up on a tree.

Q. Anything else?
A. A Winchester and a pair of blankets.
Q. Do you know whether he left a pistol or not?
A. Yes, sir; he left a little pistol in the saddle pockets.
Q. Left pistol, Winchester, saddle, and bridle, and turned the horse loose?
A. Yes, sir.
124 Q. What was that for?
A. We decided then to go home.
Q. Who did?
A. Rogers and myself.
Q. What became of Queen?
A. He went back to Barber's; started back in that direction.
Q. You and Rogers decided to go home?
A. Yes, sir.
Q. Why?
A. We thought we were out of our place, better go back if we could.
Q. How were you going to go home?
A. We were going to walk to Coffeyville, and we were going to take the train there and go around through Missouri. We had no money to amount to anything, and Queen, I believe, gave us four or five dollars, and we beat our way in front of the blind baggage.
Q. Why did you turn the paint mare loose?
A. I picked up a paper at Barber's and saw she was advertised.
Q. Advertised how?
A. Advertised as stolen property and a reward offered. I carried her over there and turned her loose.
Q. You turned her loose on the river?
A. Yes, sir; turned her loose and made her swim the river.
Q. About what time did you get to Coffeyville?
A. Fourth of July.
Q. Anything going on there?
A. Yes, sir; they had a big dinner there that day and a dance, I think.
Q. You were there?
A. Yes, sir; that is, we were very late in the evening.
Q. Where was it that you and Rogers quit and determined you would go home?
A. Somewhere about 8 or 10 miles below Coffeyville, I reckon.
Q. What did you do with the Barber horse?
125 A. Queen carried him back to Barber's; said he would.
Q. What was done there with regard to that? Where was it that he said he would do that?
A. On a creek somewhere about 8 or 10 miles this side of Coffeyville.
Q. What was done?
We set down and had eaten dinner, and there was a crow lit in a tree up over us, and Rogers picked up a gun and killed the crow, and dropped blood down on the saddle.
Q. What was that for?
A. To make these other folks think that somebody had run into us.
Q. Was that the saddle that Queen was to take back?
A. Yes, sir.

Q. He was to take that back to Barber's?
A. Yes, sir.
Q. That was for the purpose of making people think and believe that Rogers had been killed—shot?
A. It was my saddle.
Q. That you had been killed, then. Well, now then, after the shooting of the crow and the blooding of your saddle, where did you go?
A. Rogers and myself went to Coffeyville.
Q. Where did you go from there?
A. I think the first place I can remember the name is Osweego.
Q. What route did you take to go home?
A. We came through Osweego, and down through Monette, Missouri.
Q. From Monette where?
A. Through Ft. Smith; from here to Paris, Texas; from Paris to Dallas, from Dallas to Ennis. I stopped there and staid three or four weeks; went from there to Waco, and from there I went out in the country and staid there three or four weeks; from there to Marlin, and from there went home.
Q. What became of Rogers?
A. He left me at Ennis.
Q. Where is Rogers now?
A. He is dead.
Q. Got killed in Texas, did he not?
A. Yes, sir.
126 Q. Do you know anything about this gray horse that Lewis rode?
A. Nothing; only that he told me he bought him from Queen.
Q. How many people were there there at that bridge, at the Verdigris when you went down there?
A. I think there were as well as I could state some three or four persons standing around there.
Q. When you went down there and got your horse and started home, you did not see these four parties until you got to Lewis's, I understand?
A. No, sir.
Q. You did not find them until then?
A. No, sir.
Q. You think you got in there about sundown?
A. Yes, sir.
Q. What horse was you riding about that time?
A. I was riding a paint mare.
Q. That is the one that was left in the brush that night, and the one you got on?
A. Yes, sir.
Q. When you first went from Ft. Gibson down there at what place did you all cross the Verdigris?
A. We crossed at what is called, I think, Rocky Ford.
Q. On which side of the Verdigris does Lewis live?
A. On the west side.
Q. Which side of the Verdigris was this killing?
A. On the west side or south side, the way the river runs there.
Q. You must have crossed the Verdigris twice?

A. Yes, sir.

Q. Where did you cross it the first time in going to Gibson? When you four men were riding down with the led horse?

A. We went through the bottom; there was no road; when we struck the river we crossed it; we were not in any road.

Q. How did you travel that day, in the roads or in the woods?

A. In the prairie; most of it was prairie.

127 Q. Did you ride the roads?

A. Very little.

Q. Kept away from the roads, did you?

A. Yes, sir.

Q. Was anything said about being disguised; how you were to disguise?

A. Yes, sir; we were to use red handkerchiefs as masks, tying them across our face this way, just below the eyes; just so we could see.

Q. You of course do not know whether they worse these masks or not? You was not there?

A. No, sir; I wasn't there. I do not know whether they wore them or not.

Q. You had a red handkerchief with you, you say?

A. Yes, sir.

Q. You had your coat tied up in it?

A. Yes, sir.

Q. Did you tell me about how many men you saw when you crossed the bridge there in going down after the robbery?

A. I suppose there was somewhere about three or four men around there.

Q. You turned to the right when you got about to *to* the tank?

A. Yes, sir.

Q. Of course you knew where you had left your horse?

A. Yes, sir.

Q. Were your horses shod?

A. Yes, sir.

Q. Where were they shod?

A. They were shod, some of them, a couple of days before.

Q. Who shod them?

A. Johnson shod them.

Q. At Lewis's?

A. Yes, sir.

Q. He had means there for shoeing horses, had he?

A. Yes, sir. That is, Johnson had an outfit himself.

Q. Where did you get the iron to make the shoes?

A. We got the shoes at Tulsa.

128 Q. Where did Johnson get his outfit?

A. He bought it as we come on up to the Territory?

Q. How did he manage about an anvil?

A. He didn't have any anvil; he bought the shoes.

Q. State then what tools he got?

A. Hammer and rasp was all.

Q. Who got the shoes?

A. I got them.

Q. Where?
A. At Tulsa.
Q. Nails?
A. Yes, sir.
Q. How long before was that?
A. Some two or three days, I think, before we started.
Q. Do you know who these cowboys were that came up to Dawson's while you were there on Monday?
A. One of their names was House.
Q. House is here, is he?
A. Yes, sir.
Q. Was Lewis there at that time with you men?
A. Yes, sir.
Q. Where were your horses?
A. Tied just back of the cabin, down over the hill, right smart hill there; they were tied down under that.
Q. Why were you staying at Dawson's; why didn't you stay at Lewis's?
A. We were right over there at the edge of another bottom; we thought it would be better.
Q. Why?
A. Better hiding place.
Q. What kind of a hiding place was it?
A. It was a steep hill; we thought it was a better place to protect us than at Lewis's.
Q. Steep hill behind or before the house?
A. Behind the house.
Q. Brushy or thickety there?
A. Yes, sir; brush pretty thick right in the bottom.
129 Q. What bottom?
A. I have forgotten the name of the creek now.
Q. Do you know Mr. Hasty?
A. Yes, sir.
Q. Where did he live?
A. He was working at Lewis's.
Q. At the time that these things were going on?
A. Yes, sir.
Q. Was he with you *into* this conspiracy? Did he go with you to the train?
A. No, sir.
Q. Did you talk with him or consult with him about the matter?
A. No, sir; nothing was said to him about it at all.
Q. He was there at Lewis's at work?
A. Yes, sir.
Q. That's the way this thing occurred, is it, as far as you know?
A. Yes, sir.
Q. You say you are the man at Gibson who failed to get on the train?
A. Yes, sir.
Q. To whom did you first tell this matter?
A. After it occurred I told it to my brother.

Mr. BARNES (of counsel for defendant). I do not know as that has anything to do with it.

The DISTRICT ATTORNEY. I am not asking for any conversation.

The COURT. I think it is competent.

Mr. BARNES (of counsel for defendant). We will save an exception to that.

The DISTRICT ATTORNEY. (To witness.) To whom did you first tell it?

A. I told it to my brother.

Q. Where did he live?

A. One lived at Franklin; one at Leon, in Texas; I had two of them, and I told it to both of them.

Q. You say you told your two brothers about it?

A. Yes, sir.

Q. Did you receive any advice?

130 Mr. BARNES (of counsel for defendant). I object to that question.

The COURT. I think you had better defer this until cross-examination.

The DISTRICT ATTORNEY. How old are you?

A. 27.

Q. Married or single?

A. Married.

Q. When were you married?

A. Last October was a year ago.

Q. Two years ago this October?

A. Yes, sir.

Q. You are telling the truth about this matter? You have told it just as it occurred, as far as you know?

A. Yes, sir.

Cross-examination by Mr. BARNES:

Q. Who first arrested you?

A. I have never been arrested.

Q. Never have?

A. No, sir.

Q. How many statements have you made about this case?

A. Well, sir, I have been before the commissioner and was before the grand jury.

Q. There are two sets of papers here. You were arrested by a deputy marshal down there in Texas, were you not?

A. No, sir; I never was.

Q. You say you made a statement to a commissioner down there in Texas; you were arrested by a deputy marshal down there before you made a statement?

A. No, sir; I was never arrested at all.

Q. You do not know of any arrangement between Mr. Kinney and the deputy marshal in regard to your being taken before that commissioner?

A. No, sir; I don't know anything about it.

Q. Do you know any deputy marshal that communicated with

131 Mr. Kinney, the detective here, before you were taken before the commissioner about your statement?

A. No, sir; I don't.

Q. What commissioner did you go before in Texas?

A. I went once before Judge Wood.

Q. Then when you went before Col. Brizzolara, the commissioner of this court here, was the statement that you had made somewhere else put for in as a part of your statement there—this one he has been examining you for the last half an hour by here—wasn't that put in? Wasn't that statement made out before you came here?

A. There is one statement I made before Capt. Kinney.

Q. Was it put in type?

A. I don't know whether it was or not.

Q. The first statement you ever made was it in ink or type?

A. Ink.

Q. The next statement was in type?

A. It was written down with a pencil. I don't know whether it was put in type after that or not.

Q. That was the second statement?

A. Yes, sir.

Q. Does that look like it (exhibiting a paper)?

A. I could not tell you.

Q. Then when you came before Col. Brizzolara here do you know whether all this statement was made over to Col. Brizzolara or only a part of it?

A. I don't know.

Q. There is two statements in different type and different ink; what I want to know is if you do not know that this first statement was brought here and put in there, just pinned in, that you had made it, and that you went on before Col. Brizzolara and made another statement that

132 was pinned to it, and was cross-examined on your statement?

A. I don't know whether I made all that statement to Col. Brizzolara or not; I made a statement to him.

Q. Here is the one I am talk about (exhibiting paper), as to whether that was made before Brizzolara or not, word for word as it is there, or whether that was put in; and this one (exhibiting) made before him? Anyway, you had made two statements before that?

A. I had made one before Judge Woods, at Tyler, Texas.

Q. Did you prepare it yourself?

A. No, sir; he wrote it down himself.

Q. Did anybody prepare a statement for you?

A. I made the statement before him and he wrote it down himself?

Q. Who was with you?

A. I was by myself.

Q. Was any lawyer with you at any time there? Was there a lawyer by the name of Dodson lived there?

A. Yes, sir.

Q. He was with you?

A. He was at Jewett with me and he went to Tyler with me, but I made the statement myself.

Q. This lawyer, you got with him at Jewett, did you?

A. Yes, sir.

Q. He was a kinsman of yours, was he not?

A. Yes, sir.

Q. You made a statement to him, didn't you?
A. He and I talked a little about it.
Q. He went with you to Tyler, did he?
A. Yes, sir.
Q. Don't you know that he fixed up your statement?
A. No, sir; I do not.
Q. Don't you know that he claimed to have done so?
A. No, sir.
Q. Had you been in any trouble before that time, before you went up into the Indian Territory?
133 A. No, sir; not before I went to the Indian country before.
Q. You were never in any trouble before?
A. No, sir; not before I came to the Indian country.
Q. Where was you charged with assault with attempt to kill?
A. That was afterwards.
Q. This same uncle got you out on a plea of simple assault, did he not?
A. Well, he and another uncle together.
Q. You were charged with an assault with attempt to kill?
A. Yes, sir.
Q. When was that?
A. That was in September or October, 1888, I don't remember the time.
Q. You hadn't much more than got home, had you?
A. I had been home a little bit; not long though.
Q. After that you found there was an indictment against you in this court for murder, did you not?
A. No, sir; I did not find out anything of the kind.
Q. What name did you go by?
A. Whereabouts?
Q. Up in the Indian country.
A. I went by the name of Joe Foster.
Q. Don't you know that in August, 1888, Joe Foster and 10 other men were indicted in this court for murder and robbery in connection with that train?
A. I don't know anything of the indictment at all.
Q. You honestly mean that—that you didn't know anything about this indictment?
A. No, sir.
Q. Do you know whether it is pending here against you now or not?
A. I don't know anything about it.
Q. I suppose you didn't feel any interest; you did not communi-
134 cate to find out whether you fellows would be indicted or not?
A. No, sir.
Q. Now, you started out with this man Johnson. You and your cousin Rogers were working there on Roger's prairie, were you?
A. Yes, sir.
Q. How soon after you returned there was it that Rogers was killed?
A. He was killed the first day of October.
Q. What time was he killed with reference to your scrape?
A. After that he was killed.
Q. What was Rogers right name?

A. I. T. Rogers.
Q. What name did he go by up in the Indian country?
A. Sam Halloway.
Q. Was Queen under his right name?
A. Yes, sir.
Q. Did you know a man by the name of William Whitley?
A. No, sir.
Q. Do you know a man named Joe Foster?
A. Yes, sir.
Q. Do you know John Barber?
A. I seen him after everything was over.
Q. Did he go by his right name?
A. So far as I know he went by that name at his daddy's.
Q. Did you know Oscar Coulter?
A. No, sir.
Q. Did you know William H. Dawson?
A. Yes, sir; I know Will Dawson.
Q. Did you know a man named Dustin?
A. No, sir.
Q. Did you know a man named Jim Stevens?
A. No, sir.
Q. Were you ever in the Indian country before this occurrence?
A. No, sir; I never was.
Q. Was Johnson?
135 A. Yes, sir; I suppose he had been; he said he had.
Q. Did Johnson go sometimes by the name of Stevens as well as Johnson?
A. I learned afterwards that was his right name.
Q. Stevens?
A. Yes, sir.
Q. His name was Jim Stevens instead of Johnson?
A. I think his name was John Stevens, if I am not mistaken.
Q. You did not associate with these men Coulter and Dustin up there?
A. No, sir; I never heard of them.
Q. Or Whitley?
A. No, sir.
Q. Don't you know that Coulter was right around in that country while you were there?
A. I know nothing of him, sir.
Q. But you did know Dawson and Barber. Which Dawson is that? Is he a young man?
A. Yes, sir; somewheres, looked like to be 22 or 23; maybe a little older.
Q. Johnson, you say, had been in the Indian country before; how long had he lived there?
A. He did not say.
Q. All you know is what he told you?
A. That is all.
Q. Now, you and this cousin of yours were there farming, and he just come to you there and proposed to you *to you* to go with him to the Indian country?
A. Yes, sir.

Q. You made a statement to him, didn't you?
A. He and I talked a little about it.
Q. He went with you to Tyler, did he?
A. Yes, sir.
Q. Don't you know that he fixed up your statement?
A. No, sir; I do not.
Q. Don't you know that he claimed to have done so?
A. No, sir.
Q. Had you been in any trouble before that time, before you went up into the Indian Territory?
133 A. No, sir; not before I went to the Indian country before.
Q. You were never in any trouble before?
A. No, sir; not before I came to the Indian country.
Q. Where was you charged with assault with attempt to kill?
A. That was afterwards.
Q. This same uncle got you out on a plea of simple assault, did he not?
A. Well, he and another uncle together.
Q. You were charged with an assault with attempt to kill?
A. Yes, sir.
Q. When was that?
A. That was in September or October, 1888, I don't remember the time.
Q. You hadn't much more than got home, had you?
A. I had been home a little bit; not long though.
Q. After that you found there was an indictment against you in this court for murder, did you not?
A. No, sir; I did not find out anything of the kind.
Q. What name did you go by?
A. Whereabouts?
Q. Up in the Indian country.
A. I went by the name of Joe Foster.
Q. Don't you know that in August, 1888, Joe Foster and 10 other men were indicted in this court for murder and robbery in connection with that train?
A. I don't know anything of the indictment at all.
Q. You honestly mean that—that you didn't know anything about this indictment?
A. No, sir.
Q. Do you know whether it is pending here against you now or not?
A. I don't know anything about it.
Q. I suppose you didn't feel any interest; you did not communi-
134 cate to find out whether you fellows would be indicted or not?
A. No, sir.
Q. Now, you started out with this man Johnson. You and your cousin Rogers were working there on Roger's prairie, were you?
A. Yes, sir.
Q. How soon after you returned there was it that Rogers was killed?
A. He was killed the first day of October.
Q. What time was he killed with reference to your scrape?
A. After that he was killed.
Q. What was Rogers right name?

A. I. T. Rogers.
Q. What name did he go by up in the Indian country?
A. Sam Halloway.
Q. Was Queen under his right name?
A. Yes, sir.
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A. Yes, sir; somewheres, looked like to be 22 or 23; maybe a little older.
Q. Johnson, you say, had been in the Indian country before; how long had he lived there?
A. He did not say.
Q. All you know is what he told you?
A. That is all.
Q. Now, you and this cousin of yours were there farming, and he just come to you there and proposed to you *to you* to go with him to the Indian country?
A. Yes, sir.

Q. And that you could make money working at stock. Did you work stock any while you were up there?

A. No, sir; never worked any at all.

Q. You agreed to go if you could sell your crop?

A. Yes, sir.

Q. You sold it?

A. Yes, sir.

Q. He went and hunted a man to buy it?

A. Yes, sir.

Q. Said he could find you a buyer?

A. Yes, sir; knew a man who would buy it.

136 Q. Went off and found him; was gone about a couple of days?

A. Yes, sir.

Q. This man came to you to buy your crop?

A. Yes, sir.

Q. And you sold it?

A. Yes, sir.

Q. He did not kick at the price?

A. Never said a word.

Q. Just come at Johnson's instance when he proposed that you fellows go to the Indian country to work at stock, as you say? Now, then, you sold your crop, and this man Atkins bought it, and then you and Johnson started together, did you?

A. Yes, sir.

Q. Rogers took the train; you rode Rogers's horse?

A. Yes, sir.

Q. You were all going to meet again afterwards, I suppose?

A. We were to meet at Pryor Creek; at Barber's, there somewheres; that was where we was to go and Rogers was to get off at Pryor Creek.

Q. When was that Pryor Creek robbery?

A. Well, sir, I do not know anything about it.

Q. You do not know anything about that either?

A. No, sir.

Q. You never heard of it, did you?

A. I heard of it while I was up there sometime, or while I was here; I don't remember.

Q. Was it before the robbery you were in that you heard of it, or after?

A. I don't remember whether it was before or after.

Q. But the meeting place of you fellows was to be at Pryor Creek?

A. Rogers was to get off at Pryor Creek.

Q. You traveled for about a month; you had not known Queen before, I suppose?

A. No, sir.

Q. When you first got up in that neighborhood, where was the first place you went to; Barber's or Lewis's?

A. We went to Lewis'.

Q. And Johnson inquired for Queen?

A. Yed, sir.

137 Q. Did you go through Okmulgee on your route to Lewis's?

A. We went through some place over there; I believe it was Okmulgee; anyhow, I believe it was the capital of the Creek Nation, as well as I remember; somewhere over there.

Q. That lay on the route you travelled, did it?
A. We went through Caddo.
Q. You went through Stonewall, didn't you?
A. Yes, sir.
Q. You went through Okmulgee before you got to Lewis's?
A. Yes, sir; and through Tulsa; we went through Tulsa.
Q. Did you go through Okmulgee?
A. I think that was the name of the place, as well as I remember.
Q. Were you introduced to Lewis that evening or the next morning?
A. I was introduced to him that evening.
Q. You did not make that statement before. Here is what you said before: "Lewis arrived home about dusk; Queen introduced Johnson and myself to Lewis next morning." In your going around there you did just whatever these fellows told you to, didn't you?
A. We were altogether.
Q. I see here that you start to tell about the different places you went to, and that they told you to do so and so, to go to this place and that place, and the other place, and you did just what they told you all the time?
A. I went to Tulsa a time or two and went to Coffeyville once.
Q. You say now after you were at Lewis's that you went from there to Dawson's and that they told you to go and stay all night at Dawson's, and then next day "they told me to go to old man Barber's," and in all your movements there, when you went to meet Rogers, you say they
138 told you to go to a certain place to meet him, and you went right along around wherever they told you; that is the way of it, is it? Some fellow would tell you to go and you would go from one place to another; do whatever they told you?
A. They told me where he was and I went after him.
Q. "He said, 'You go to Pryor's Creek and bring him out.'" Was you just travelling around there, being ordered around by Johnson and those other fellows? Whenever they ordered you to go or told you to go, did you just obey them? You did not ask any questions; didn't look back or anything; whenever they told you to do anything you went and done it; is that right?
A. Sometimes I would go.
Q. Isn't that the way you gave in this statement, in describing every movement you made from the time that Johnson came to you to sell that crop? You describe everything as being done under somebody else's orders, and that they told you to do so and so, and everything you were told to do you did; isn't that the way you made your statement?
A. I don't know that it is all the way through that way.
Q. It is pretty much that way, is it not?
(No response.)
Q. You didn't stop to make any inquiry, or to find out what all this sort of thing meant, and when you were introduced by a ficticious name I suppose Johnson told you to just go around by that name?
A. He introduced me by Joe Foster.
Q. You just took it as a matter of fact that that was right?
A. I never said a word.
Q. You had always gone under your right name before?
A. I had never changed my name before.

Q. But when some fellow changed it for you that had told you
139 to do so and so, ordered you all around the country afterwards, you just let him change it, and never said anything; is that right?

A. He changed it; yes, sir.

Q. You did not say a word?

A. No, sir.

Q. You did not say what your right name was at all?

A. No, sir.

Q. Of course you had not been applied to to go into any unlawful enterprise, or anything of that sort, or didn't have your name changed for that purpose?

A. No, sir.

Q. You did not suppose you were going in bad company?

A. No, sir; I didn't know anything about having anything to do with any train at all then.

Q. How long did you stay at old man Lewis's before you went to Dawson's, and from there to Barber's?

A. Well, sir, we got there one evening and went to Dawson's the next day, and the next morning I went to Barber's.

Q. Now, how much time do you claim elapsed between the time you went to Barber's until this plot was formed to rob the train? You told Mr. Clayton 'while ago it was two or three weeks, did you not?

A. I said I didn't know the exact time; somewheres there.

Q. Let's see how you put that in your statement before the commissioner. I suppose this was put in as a part of your statement. I don't know that you really made it there or not. We will just say you did. You say you never knew a man by the name of Whitley?

A. Never knew of any such man; I don't know anything about him.

Q. You never heard of him?

A. I might have heard of him, but I never knew of him.

Q. I asked you while ago if you ever heard of any such a
140 man, and didn't you say you hadn't?

A. You asked me if I knew such a man, or knew of him.

Q. We will put it that way.

A. Well, I don't know him; I have heard of him, though.

Q. Why didn't you tell me that while ago?

A. I don't know whether you asked me that or not; I didn't understand it.

Q. I will read some of your statements here, and see if this is correct. After telling about Lewis being at home, and you being introduced to him there that night or the next morning, you say, "Queen, Johnson, and myself started to old man Barber's; when we came in sight of old man Buck Dawson's house they showed it to me, and told me to go there and stay all night, and come to old man Barber's next morning." You went from Lewis's to Dawson's the next day after you got to Lewis's?

A. Yes, sir.

Q. That is, you started to Barber's, but when you got in sight of Dawson's they told you—Queen and Johnson, now—to stay all night at Buck Dawson's?

A. Yes, sir.

Q. And then next morning, you say, they told you how to get to old man Barber's?

A. Yes, sir.

Q. You go on then in your statement to describe your trip. You went to old man Barber's?

A. Yes, sir; next morning.

Q. You stopped at Dawson's all night?

A. Yes, sir.

Q. That is, after leaving Lewis's; and then you went to old man Barber's the next day after that, didn't you, and before the robbery?

A. Yes, sir; after I staid all night at Dawson's, the next morning I went to Barber's.

Q. Then, when you got there, the next thing was you went over to Pryor Creek. When you got there you learned about Rogers being at Pryor Creek, did you?

A. Yes, sir; when I got to Barber's.

141 Q. Then they told you to go to Pryor Creek and bring him out?

A. Yes, sir.

Q. You went to Pryor Creek and met him; now, what day was that? Was that the same day you got to Barber's?

A. Yes, sir; the same.

Q. That would be the third day. And you say that Rogers told you to go back to Chelsa, he would take a train and go by way of Vinita, and meet you in Chelsa?

A. I think you have got that a little wrong.

Q. You met him at Pryor Creek?

A. Yes, sir.

Q. Didn't he tell you to go back to Chelsa?

A. He said he would take the train.

Q. You met him at Chelsa that same day? I guess I had that other wrong just now. You met him at Chelsa the same day?

A. Yes, sir; I met him at Chelsa.

Q. Where did you go from there?

A. Back to Barber's.

Q. Then you went to Lewis's?

A. Yes, sir.

Q. How many days did that consume—three or four—from the time you left Lewis's?

A. I think it was somewhere about 4 days—three or four days; about four days.

Q. Then you staid at Lewis's several days before you went on this robbing expedition?

A. Yes, sir; we staid there some bit.

Q. Is it not a fact that you stated before the commissioner, in making this round you were three or four days; that you then went back to Lewis's and staid there several days, and that then you formed this plot down at the hay pen? Wasn't that your statement before the commissioner?

A. We went back to Lewis's and staid there and formed that plot.

Q. Then that was all done inside of a week, was it not?

142 A. Four days.

Q. Now, you staid there for several days down at the hay pen playing cards; you formed this plot to rob the train; you didn't camp onn the old man there two, three, or four weeks, did you; after you got back there? You don't say so here?

A. I don't know how long we staid; some several days; I don't know how long.

Q. After you formed the plot at the hay pen, how long was it until you started to commit the robbery?

A. Well, sir, we started, as well as I remember, on Thursday, the 14th, I think it was, of June; the robbery was committed on Friday, 15th of June.

Q. That is not answering the question; that is dodging it. Did you on the same day that you formed the plot at the hay pen to rob the train, did you start that day, or the next day?

A. It was several days afterwards.

Q. The plot was formed inside of a week, wasn't it?

A. About a week, I guess; somewheres thereabouts.

Q. Lewis never came into it, according to your statement, so far as saying anything was concerned, until this game of cards was being played there, as to who should ride the train down? Hold on; what was this first game about there?

A. To see who should ride the train from Gibson Station down.

Q. Lewis never said a word, or came into it, according to your statement, until then, and he was standing by and said he wanted to go; he was standing by, and volunteered to go; that was inside of a week, you say, from the time you first got there? Then, you say, you went to Coffeyville, at the instance, I believe you say, Johnson, to get two Winchesters, and brought them there?

A. Yes, sir; I went to get the Winchesters.

Q. You are going to stick to that, ain't you, about your going
143 after the Winchesters?

A. Yes, sir.

Q. I will ask you if you swore to this before the commissioner, after telling about this game, after telling that Lewis went to the house to get permission of the woman to go: "I forgot to state——" Hold on; I want to ask you another question before that. When was it that the Winchesters were went after?

A. Went for before the robbery.

Q. Were they sent for after you got back to Lewis's, and after you formed the plot?

A. Yes, sir.

Q. That is correct, is is?

A. Yes, sir.

Q. And you went for them?

A. Yes, sir.

Q. Did you state before the commissioner: "I forgot to state that while at old man Barber's, Johnson sent Rogers to Coffeyville to buy two Winchester guns; Rogers bought them and delivered them to Johnson." Did you swear that before the commissioner?

A. I don't remember whether I did or not.

Q. Before Commissioner Brizzolara?

A. I don't remember whether I did or not.

Q. Do you swear here now that this plot was formed within the inside of a week, of Johnson sending you to Coffeyville to buy two Winchesters, and that you went and got them and brought them back? I will ask you again if you said before the commissioner, "I forgot to state that while at old man Barber's, Johnson sent Rogers to Coffeyville to buy two Winchesters guns; Rogers brought them and delivered them to Johnson." Did you swear to that?

A. I don't remember whether I did or not.

Q. Is it a fact, or did you go?

A. I went.

Q. Then, if you swore that before the commissioner you swore that which was not true, did you?

A. I went after the Winchesters.

144 Q. Have you ever claimed before that two or three weeks elapsed from the time you went up there to the time of this robbery? Do you claim it now, from the time you went up there until the robbery was committed?

A. I don't know exactly how long, but some two or three weeks.

Q. Do not go to dodging; you say that the plot was formed within inside of a week; don't you know that you went on before the commissioner to give the understanding as though immediately after this plot was formed that you made your preparations and went to rob that train?

A. I said we went after we made preparations to get some horses, I think.

The DISTRICT ATTORNEY. You are putting it to him different from what it is there.

Mr. BARNES (of counsel for defendant). No, I am not, either.

(Witness.) What did you do with your money?

A. What money?

Q. You had some money when you went up there; it didn't cost you much to go there; you rode Rogers' horse, and went over the country; how much did you sell your crop for?

A. He never paid it until he gathered it in the fall.

Q. Then you were needy, were you. How much money did you take with you up there?

A. We didn't take much; I don't know exactly how much.

Q. You rode Rogers's horse?

A. Yes, sir.

Q. How much money did you have?

A. I don't know how much I had.

Q. Have you no idea?

A. I have no idea how much I had.

145 Q. You made a horse trade on these rounds, traded for a paint mare, didn't you?

A. I let Queen have the roan horse and I took the paint mare.

Q. Whose roan horse was it?

A. I got it from Johnson.

Q. Did he give it to you?

A. He said that I could pay for him whenever I got ready; whenever I wanted to.

Q. The title was good, I suppose; or I suppose you did not stop to inquire into that. He gave him to you to trade on?

A. No, sir; he told me I could have the horse and pay for him whenever I got ready.

Q. Where did he get the roan horse?

A. I don't know where he got it.

Q. Did he have him when you got up there?

A. He had him—we rode him from Texas.

Q. Pretty good horse?

A. Yes, sir.

Q. You got up there before this robbery; Johnson just told you you could have this roan horse and pay for him whenever you got ready?

A. Yes, sir.

Q. And then you went to work and traded the roan horse for a paint mare?

A. Yes, sir.

Q. And found out afterwards that he was a stolen horse?

A. Queen told me he was himself.

Q. When did he tell you about this roan being a stolen horse?

A. On the way to the robbery.

Q. You were on your way to rob a train, and a man had given you a horse that was stolen, and you thought you had better trade that horse off and get another; you were trying to get a horse that had a good title to it?

A. He told me that he would let me have the paint mare.

146 Q. When he told you it was a stolen horse you concluded to trade for another; you wanted to get rid of it because it was stolen property?

A. I didn't want the roan horse.

Q. You did not have any suspicion that the paint mare you were trading for was stolen?

A. No, sir; I didn't know where he got it.

Q. You thought then that when Queen and this other fellow went off to get the paint mare and some other animal that they had traded for them or bought them?

A. Yes, sir; I didn't know how they got them. I supposed they traded for them or bought them.

Q. You say in your statement, "We went to Lewis's and staid there several days," and then you go on and tell about this plot down at the hay stack, plot being formed; that Johnson remarked you were getting scarce of money and that you were bound to have some in some way. Then he proposed to pull the M. K. & T. train, and you and Rogers and Queen to go in, and then Lewis spoke up and said that he would go in if his wife was willing, and then didn't you go right on and say that he went to his house and then that you played a game of cards about r'iding the train, and you say that you and Queen were stuck to do that; then did not the preparation begin at once to make that trip? The guns, mind you, had been sent for before that. Now, according to your present statement, which is true? Did you commence to make arrangements to go on this trip at once?

A. Yes, sir; we wasn't in any hurry about it.

Q. I have asked you about how these guns were sent for. I will ask you if after this you did not say that Lewis went to the
147 house, and you played this game of cards, and you went to the house and Lewis told you his wife was willing for him to go, and that you then began to prepare for the robbery, and that Mrs. Lewis cooked up the bread? You had no horse then and you told about Johnson letting you have his horse. That is what you say here; told you that you could pay for the horse when you got ready—didn't you say before the commissioner that he said you could pay for him after the robbery?

A. He said if I got anything I could; if I didn't, I could when I got ready.

Q. You said awhile ago that he said you could pay for the horse when you got ready, and that you found out from Queen he was a stolen horse; then you went to work and traded him off; but according to this you say here, which you now admit, that he said you could pay for him after the robbery; then you ought not to have traded him off because he was a stolen horse that you expected to pay for out of the proceeds of a robbery, had you?

A. I don't know.

Q. You was not afraid of a stolen horse if you expected to pay for him out of what you got robbing a train, was you?

A. I did not care about keeping him; I didn't want him.

Q. You had no suspicion about the paint mare?

A. I did not know anything about where he got her or how he got her.

Q. You have sworn here that it was the 14th of June that you started; that is what you said in your examination awhile ago, that you started down there on the 14th of June; is that correct?

A. Where?

Q. Down to Gibson Station?

A. Yes, sir.

Q. The day before the robbery?

A. Yes, sir.

148 Q. What time of day did you start from Lewis's in the morinng?

A. Pretty early in the morning; I don't know, maybe a little after sun up, about sun up, or about that time.

Q. You said to the district attorney while ago it was about 40 miles?

A. Yes, sir; about that.

Q. I will ask you if you did not state in your examination before the commissioner it was 50 miles?

A. Well, I said somewhere about 40 or 50 miles; I think somewhere in that neighborhood.

Q. Now, then, you had a lead horse along?

A. Yes, sir.

Q. You got there and pitched your camp in broad daylight, I suppose, on the prairie there?

A. It was getting dusk when we got there.

Q. What time did you pitch your camp on the 14th?

A. I suppose about dusk; betwixt sundown and good dark.

Q. How long after you pitched your camp before you sent in for Lewis?
A. It wasn't long; I don't know how long.
Q. Did you get supper first?
A. No, sir.
Q. Did you have anything to eat?
A. Yes, sir.
Q. Did you go and camp on the open prairie close to Gibson Station?
A. Yes, sir.
Q. If you had been dodging through the woods and bottoms to avoid people seeing you go there, why did you go and camp on the open prairie?
A. We wanted some place to stake our horses.
Q. Now, then, you say you staid in camp a whole day after that—that is, you staid in camp that night that Lewis was sent for and brought out, and that you then went over in the bottom; did you go next morning?
A. Yes, sir.
Q. How close did you go to this bridge?
149 A. I suppose it was some 150 or 200 yards; I don't know the exact distance; about 200 yards, I reckon, may be three.
Q. Now, don't go to guessing; you can fix it near enough; how far was it?
A. I don't know how far.
Q. Well, how far from the bridge was is that you camped?
A. I never stepped it; I don't know how far it was.
Q. Well, about?
A. I suppose somewheres about 200 yards; I don't know.
Q. You don't stick to what you first said—150 yards. You began to think where that tank is, and one thing and another, and you get it off. Well, we will put it about 200. You camped about 200 yards from that bridge?
A. We camped right west of the tank.
Q. People around there all the time, was there not?
A. There was nobody about our camp at all.
Q. How near did you go to the track to camp?
A. Some 75 or 80 yards, I guess, or 100 yards.
Q. You camped out of sight of it, did you not?
A. By peeping around a little we could see the track.
Q. It was not three hundred yards?
A. No, sir; I do not think it was that far.
Q. How far did you camp from the track?
A. I suppose it was about 100 yards.
Q. How far from the bridge?
A. About 200 yards, I guess.
Q. You don't know that that would throw you right square into a cleared patch, do you?
A. I don't know; I don't suppose there was any cleared patch there.
Q. It was all woods on that side, was it?
150 A. There was no cleared patch where we camped.
Q. There was no 7-acre cleared field on that side, was there?
A. I never noticed any.
Q. Did you notice any clearing there at all?
A. I think there was a little clearing right there by the river.

Q. Did it come up there by that tank?

A. It didn't come up to where we were; came right at the tank. The tank is on one side of the road and we were on the other.

Q. You did not camp on the same side of the road the camp was on?

A. No, sir; the tank was on the east side and we camped on the west side.

Q. You did not see any cleared field there on either side?

A. Not right at us.

Q. You staid there and played cards all day, did you?

A. Yes, sir.

Q. You got there on the 14th, to this camp at Gibson?

A. Yes, sir; we camped there on the night of the 14th, as well as I remember.

Q. Now, we will see what reason you have for changing this statement. I will ask you if you swore before the commissioner that on the morning of June 15th, you, Queen, Rogers, and old man Lewis left his house to go on this expedition. Did you say this: "On the morning of June 15th, 1888, Queen, Johnson, Rogers, old man Lewis, and myself left Lewis's house for Gibson Station," and then go on and tell about Lewis going to Tulsa to take the train?

The DISTRICT ATTORNEY. He puts the robbery the next day, the 16th.

151 Mr. BARNES (of counsel for defendant). Did you state it was the 15th, and that this robbery occur'ed further along, and that this robbery occur'ed on the night of the 16th?

A. I don't remember whether I did or not.

Q. You are educated; you can read and write?

A. I reckon I can, a little.

Q. I will ask you if you said on the morning of June 15th, 1888, you left Lewis's house, and that this robbery occur'ed on the night of the 16th?

A. I don't remember whether I did or not; whether I made that statement or not; whether it was the 14th or 15th.

Q. What is your best recollection, if you can remember; whether it was the 14th or 15 of June that you said you left there? Can you remember whether you stated further along that it was the 16th of June that the robbery was committed? (No response.) You state in your cross-examination it was about 50 miles from Lewis's to the place where this robbery was committed. Is that what you stated?

A. I said about 40 or 50 miles.

Q. What time did you leave Lewis's house to go where the robbery was committed?

A. I think it was on the 15th I said, or 14th, as well as I remember.

Q. How far did you say he lived from Tulsa?

A. About two miles.

Q. Didn't you state in your examination before the commissioner it was the 15th you started, and you stated that you staid at Lewis's house on the night of the 14th; named the 14th and 15th both? "The 15th we started out on this robbery; on the night of the 14th we staid at Lewis's." And didn't you say then, "I suppose that Lewis lived about a mile and

152 half or two miles from Tulsa?"

A. Yes, sir; I suppose that he did.

Q. Don't you kn'w that it was further than that?

A. No, sir; I thought that it was about 2 miles.

Q. Did you say that "The 15th we started on this robbery; on the night of the 14th we staid at Lewis's?" (No response.) What time of day, whether it be 14th or 15th, did you start from there?

A. I guess we started about sunup, or a little after.

Q. You say that you rode fifty miles; dodged around through the woods, took by-paths, crossed the river, and pitched your camp between sundown and dark?

A. Yes, sir.

Q. You did all that inside of that time?

A. Yes, sir.

Q. When Rogers took old man Lewis to Tulsa you had to wait for him sometime?

A. Yes, sir.

Q. How long did you wait for him?

A. He wasn't gone but a little while.

Q. I reckon you rested some in the middle of the day, didn't you?

A. We rested a little.

Q. You led this horse all the way and travelled that distance?

A. Yes, sir; we led the horse all the way and went to Gibson Station.

Q. Nobody came to your camping place that night at all there at Gibson?

A. No, sir; nobody, but we sent out after Lewis and he came in.

Q. How were you dressed at that time?

A. Well, sir, I was comfortably dressed.

Q. You could not tell to save your life, could you?

A. I had on a pair of boots, a white hat——

Q. How many of you had on white hats?

A. All except one.

153 Q. White broad-brimmed hats?

A. Yes, sir.

Q. How many of you had beards?

A. Well, we all had some beards; some wasn't so long as others.

Q. Have you not said heretofore that you had a heavy beard at that time?

A. I said I had a beard.

Q. Didn't you say that at that time you had a full beard?

A. I had a beard all over my face, but then it wasn't so long.

Q. How long? About half an inch?

A. I don't know how long it was exactly; I never measured them.

Q. About how long?

A. I suppose an inch or so, maybe an inch and a half.

Q. Wasn't it about half an inch?

A. I could not tell you how long they were for certain. I never measured them; I don't know that I measured any one of them.

Q. How many of them had full beards?

A. Well, sir, I believe there was two that had full beards; that is, pretty good length; they all had beards, but they wasn't long beards.

Q. Didn't you state before the commissioner that there was only two Winchesters in that crowd?

A. I don't think I did.

Q. You said while ago there was three; I am now asking you what you have said heretofore about that. I will ask you if you have not always said before to-day that there was just two Winchesters in that crowd, Mr. Hollman alias Foster?

A. I don't know that I ever; if I have I have forgotten it. I have always said there was three.

Q. Have you not said heretofore that all these men wore beards except one, or something to that effect? What is your recollection about that, what you have said about that.

154 The DISTRICT ATTORNEY. That is not the proper way to contradict him.

Mr. BARNES (of counsel for defendant). You can state your recollection now. Can you say they all had beards, and two of them had long beards?

A. Yes, sir.

Q. All of you had beards?

A. Yes, sir; and two had tolerable long beards.

Q. I suppose you were all provided with red silk handkercheifs?

A. I never saw any silk handkercheifs.

Q. Red handkercheifs?

A. Yes, sir.

Q. You never told about laying in a stock of red handkercheifs; I suppose you fellows just had them, or did you send off for a stock of handkercheifs when you did Winchesters?

A. We had handkercheifs.

Q. All of you?

A. Yes, sir.

Q. Now, before I forget it I want to get to this matter of your statement here in regard to when Mr. Lewis made this statement in which he said that he shot there: you don't say anything about any shooting except that one shot. I will ask you if you did not state before the commissioner that that statement that Lewis made there was made at his house the next morning after you got there? Did you state that before the commissioner?

A. I do not remember whether I did.

Q. You state here in your examination-in-cheif (I will give the substance of it, and if I am wrong the district attorney can correct me) that the next day after you got to Lewis's you went to Dawson's, didn't you?

A. Yes, sir.

155 Q. And that after you had been there a certain length of time you went to Barber's, didn't you?

A. Yes, sir.

Q. And then after you came back to Lewis's house the second time that he said that he had been to town, and he had heard there several days after he came home about this killing, and that he made this confession; that is the way you stated it to the district attorney?

A. He told about the shooting.

Q. Isn't that the way you stated it?

A. Yes, sir.

Q. Now, then, I will ask you if you stated it this way before the commissioner after telling about arriving there: "A. Next morning I started

for old man Lewis's, and on the way I met a number of people. I arrived at old man Lewis's about sundown that day. I found Lewis, Queen, Rogers, and Joynson there. They asked me which way I came. I told them the way I came." You then tell what different ones said they had done. You say, "Johnson showed me a ladies gold watch." That is in the conversation after you got there that night?

The DISTRICT ATTORNEY. He don't say it was that night.

Mr. BARNES (of counsel for defendant). After you got to old man Lewis, and found Lewis, Queen, Rogers, and Johnson there, that is, after you got there that evening, first saying that you arrived there at old man Lewis's about sundown that day, "I found Lewis, Queen, Rogers, and Johnson there. They asked me which way I came; I told them the way I came. Johnson said to me, 'You got left last night?' I told him 'Yes, it run too fast for me.' They then told me what they got. Johnson showed me a ladies gold watch he got, and they said they only got $8.75 in money. Queen remarked that the engineer and fireman did not know he was on until he had his pistol on them, and that they asked him his name, and he told them his name was Buck, and they said to
156 him, 'Buck, you must have the thing down pretty fine, one man capturing the outfit.'

Lewis then told what he done. He said that when the train stopped the porter came running to the door, and he told him three times to get back, but the porter kept coming to the door and looking out and he shot at him, and he said he thought he hit him in the arm. He said he did not know whether or not he hit anyone else, but he heard a woman scream in the car. Lewis said that he heard at Tulsa that there was a man killed at the robbery, and he remarked that he must have killed him. Johnson says, 'Yes, that is what makes a man a desperado—killing a man.' We left Lewis's house on the second morning after the robbery." Now, sir, there is one connected conversation as I understand; is that the statement you made before the commissioner, that on the evening after you got there about sundown each man went to work and told the part they took in this thing, and Lewis then told what he done, and told what you have related here, and then that following right after that you left there the next morning. Did you make that statement before the commissioner? If so, why do you state it as you do here to-day in your examination in cheif?

A. I don't know whether that is the statement I made or not.

Q. Do you recollect it being taken down in that connection?

A. I don't remember it.

Q. You don't remember you said you left there the next morning, the second morning after the robbery, right after that, and then you went up to Dawson's and told about these cow boys coming there where you were playing a game of poker? (No responses.) Will you say that
157 was your statement or not, before the commissioner?

A. I say I could not remember whether it was or not.

Q. Don't you know as a matter of fact you left Lewis's house, all you crowd of men, several days before this robbery, you got with John Barber after that time, and he went with you to the robbery?

A. No, sir; I do not.

Q. Don't you know you disappeared from Lewis's house several days before this robbery?

A. No, sir.

Q. You deny that, do you?

A. Yes, sir; I do deny that, leaving there several days before; never saw John Barber before the robbery.

Q. He was with you, you say, after that?

A. Yes, sir; in this plot to rob the Seneca bank.

Q. He just fell right in, did he? (No response). What kind of a looking man was John Barber?

A. He was a kind of a slender man.

Q. What kind of a looking man was Will Dawson?

A. He was a small like man.

Q. John Barber wasn't crippled in any way, was he?

A. He had a scar on his jaw, is all I ever remember noticing.

Q. When was he killed?

A. I don't know, sir; he was killed up there in the Territory somewhere.

Q. He was killed after Pryor Creek robbery, after there had been a couple of other men besides him, and other men, who it was found out it was done the robbery, wasn't it?

A. I don't know.

Q. Do you know whether John Barber was killed after the Pryor Creek robbery?

The DISTRICT ATTORNEY. I object to that. The men who were in the Pryor Creek robbery after that were not necessarily in this robbery.

158 The COURT. No, no.

Mr. BARNES (of counsel for defendant). You planned to go into this Senaca robbery, you say?

A. Yes, sir.

Q. You were going to do it the old-fashioned way; ride up on your horse, go in and cover the cashier, and take the money?

A. Yes, sir.

Q. And just about that time you concluded to go back to Texas?

A. Yes, sir.

Here court adjourned until Thursday a. m., Oct. 22nd, 8:30 o'clock.

Thursday a. m. Court met pursuant to adjournment at 8:30 o'clock, and examination of witness T. A. Hollaman continued by Mr. Barnes on cross-examination as follows:

Q. Did anyone leave Texas with you except Johnson?

A. Rogers left Texas, but we did not go together.

Q. Did anyone else?

A. No, sir.

Q. Did a man by the name of Mack Jones leave Texas with you?

A. He went by the name of Johnson afterwards.

Q. Was that another one of his names?

A. Yes, sir.

Q. You knew him first as Foster, did you?

A. Yes, sir.

Q. That is the name you received when you went up in the Indian Territory?

A. Yes, sir.

Q. Where did he get the name of Mack Jones?

A. He went by that name in Texas before.

Q. That was one of Johnson's names, then?

A. Yes, sir.

159 Q. Now, when you made your original confession or statement in this case, did you claim that this conspiracy was formed only three days before it was carried out to rob that train? In other words, didn't you claim that it was formed on the 12th of June?

A. If I did I don't remember it.

Q. What is your best recollection about that, that the plot was laid to rob the train on the 12th day of June and carried out on the 16th; didn't you make a sworn statement to that effect?

A. If I did I don't remember it.

Q. That was about the way of it, wasn't it?

A. I don't know as it is; I don't remember making it.

Q. Now, the house you speak of staying all night at before you went to old man Barber's, that was old man Dawson's, up near Barber's, Buck Dawson's?

A. Yes, sir.

Q. Not the Dawson that lived in two miles of Lewis, but the one that lived up near old man Barber's?

A. Old man Buck Dawson's.

Q. Now, a word about these guns. You said to the district attorney, as I understood you, that you had always claimed as you did here yesterday that there was three guns in that party?

A. Yes, sir; there was three guns in the party.

Q. In the party at the robbery?

A. Yes, sir.

Q. I will ask you if in your statement before the commissioners you did not make this statement, after telling how you were to do there at the bridge at the robbery: "Lewis had a Winchester that he borrowed from Queen; Johnson had a Winchester and a pistol; the rest of us had only pistols. The kind of a mask to be worn was a red handkerchief." Is that your statement? Did you make this statement?

A. I don't know whether that is the exact statement.

160 Q. Will you accept it or deny it? I have asked you in this examination about a number of things that way; I would like to have you for one time make an answer either adopting or disavowing this statement. Now, on this particular thing, what do you say to that? Did you make this statement, just as I have read it to you? (Witness pauses.) I will read it to you again: "Lewis had a Winchester that he borrowed from Queen; Johnson had a Winchester and pistol; the rest of us had only pistols."

A. I do not know that that is the exact statement.

Q. I will go further along to another part of your examination; I want to give you the benefit of all of it on that point. I will ask you if you did not say further along in that examination, "We were all armed; Johnson had a pistol and a Winchester; and Queen, I believe, had two

pistols and a Winchester; and I had a pistol, and Rogers had a pistol; I don't think Lewis had anything until he got to Gibson's Station, and then he got a pistol and Winchester from Queen."

A. Yes, sir; he got a Winchester and pistol from Queen.

Q. Now, this first statement here, I have read that to you to show that you claimed there now there were two guns, naming the men who had them. Then further along you name again the different arms that was there. Queen had no gun when he got on behind that tender, did he?

A. He didn't take any gun over to the station with him; he took a pistol.

Q. But he had let Lewis have his gun, according to you, and he took a pistol, either one or two; did he have one or two?

A. He had one; carried one with him.

Q. Then you are not going to claim by this that that makes
161 three guns when Queen only had his pistol when he went over to the station, are you? (No response.) I will ask you then if the first statement I read to you, if in both instances in the first and last statement, if you do not claim there was only two guns there?

A. I claimed there was three guns in the crowd.

Q. I don't see how you make it out, taking both statements and giving them any sort of construction. I understood you to say in your examination-in-chief yesterday that you went to Lewis; that you got there on the next evening after this robbery; staid there all night, and the next morning all of you except Lewis went up to Dawson's, and that he came up there on Monday and played cards with you part of the day Monday; is that correct?

A. He came up there and played cards Monday.

Q. And then you staid there until Monday evening, until you got this word, as you claim, through Dawson, who had been to town to get some provision for you, that the town was full of marshals; then you pulled out for old man Barber's; went through the bottom to his house; is that correct?

A. Yes, sir.

Q. Did you not before the commissioner swear that old man Lewis staid in your company from the time you got to his house until the time you broke up there at Dawson's?

A. If I did, sir, I don't remember it.

Q. Which thing is true?

A. If I made that statement I was certainly mistaken.

Q. Here it is: "We left Lewis's house on the second morning after the robbery and went to Will Dawson's, Lewis going with us. We staid at Will Dawson's all that day, and that night and next day. During the
last day that we staid at Dawson's, Lewis, Queen, and Johnson got
162 into a game of poker, and just before dinner a cow boy came in and sat down and watched the game for nearly an hour and then left." Did you make that statement?

A. I don't remember whether I did or not.

Q. Do you say that if you did make that statement that Lewis went with you there, that that is not true?

A. I say I must have been mistaken if I made that statement.

Q. You say it is only a mile and a half from Lewis's to Tulsa?

A. I said a mile and a half or two miles, somewheres about two miles.

Q. You said it was a mile and a half or two miles; that Rogers went down with Lewis, came back there again in about an hour, and then you started about sunup?

A. I said somewheres about sunup, or a little after sunup.

Q. It was a mile and a half or two miles, and he was gone about one hour?

A. Yes, sir; I suppose about an hour; I could not tell the exact time.

Q. Don't you know that at that time Lewis lived five miles from Tulsa, and that it was impossible for a man to go there and return in an hour?

A. I don't know the exact distance; I believe it was about two miles, or a mile and a half.

Q. Describe that paint mare you were riding?

A. Well, sir, she was a sort of a bay, white, spotted, dark spots on her—kind of sorrel spots. It was sort of dark spots and white.

Q. What you call a paint mare?

Yes, sir.

Q. How many of you had on white hats?

A. Four of us had on white hats.

Q. Mr. Lewis had on a white hat?

A. Yes, sir.

Q. With a band on it that had red edges to it?

A. Yes, sir; as well as I remember, he had on a white hat with a
163 band around it.

Q. Did it have red edges to it?

A. I think there was red about it somewhere.

Q. I just wanted to give you a chance on that, just to see if you would swear as you did before. Here is what you said: "Lewis had on white hat; had band around it; I don't know whether it had red edges to it or not." You were asked whether there was any red about it, and that was your examination before the commissioner on cross-examination. Is that correct, the way it is written here?

A. I said I don't remember whether it was red edges, or in the middle, as well as I remember.

Q. Most all of these bands have some red to them on these white hats, do they not?

A. Not altogether; it is not every white hat that has got a red band around it.

Q. Most of these large hats have, have they not?

A. This one hasn't (witness refers to his own hat).

Q. That is not the one you wore then?

A. No, sir.

Q. About the size of it?

A. Yes, sir.

Q. You didn't say it had any red about it at all before the commissioner, did you?

A. I said I didn't remember whether it was red around the edges or in the middle.

Q. That is not the way he has written it. If you said it that way I certainly think he would have written it so. Here is the way it is written: "It had a band around it, but I don't remember whether it had red edges to it or not." Well, Rogers had on a white hat, too, didn't he?

A. Yes. sir.

Q. Do you know what kind of a hat Queen had on?

A. He had on a white hat.

164 Q. What kind of a hat did Johnson have on?

A. Black hat.

Q. We will see whether the commissioner has made another mistake, or whether you are guessing. "I had on a white hat; Rogers had one, Lewis had one, and I don't remember what kind of a hat Queen had, and Johnson had on black hat." What is the matter with your memory?

A. I don't know that there is anything particularly.

Q. Did you swear that before the commissioner?

A. I don't remember that I did.

Q. Did you or not?

A. If I did I was mistaken.

Q. What kind of a beard did Rogers have?

A. He had a kind of a sandy beard.

Q. You had a beard on your face; it was not very long?

A. It wasn't so very long.

Re-direct examination:

The DISTRICT ATTORNEY. You were asked by Mr. Barnes if there were not two papers here, and if they were both written out at that time, when you were before the commissioner, or whether one of them had been written before; do you remember about that, how that was? Didn't you go before Col. Brizzolara, and wasn't there a paper that had been written by Mr. Kinney here, that you adopted there? Do you remember that?

A. There was a statement that I made to him was read there.

Q. Was that adopted there as your evidence instead of going all through your evidence and you were only examined a short time, were you?

A. Yes, sir.

165 Q. Where was that statement made, you spoke of being reduced to writing in pencil or ink in Texas?

A. It was made in Texas, at Marcay.

Q. I believe you stated yesterday what was made in pencil?

A. Yes, sir.

Q. Who is Judge Woods that you spoke of yesterday?

A. I never saw him but one time; he is judge at Tyler.

Q. You made a statement to him, did you?

A. Yes, sir.

Q. Was that statement made to him before or after the one you made to Mr. Kinney here?

A. Made before.

Q. Do you know what was done with that statement?

A. No, sir.

Q. You don't know whether that was sent to Mr. Kinney or not?

A. No, sir.

Q. You know you made one to Judge Woods?

A. Yes, sir.

Q. How long was it after you made that statement to Judge Woods before Mr. Kinney came down?

A. I don't know the exact time; it was some little bit afterwards.

Q. When that first statement was made Mr. Kinney was not there, and nobody from here was there?

A. No, sir.

Q. The statement you made to Mr. Kinney, was that put in typewriting in your presence?

A. No, sir.

Q. You say that there were three Winchesters in the company?

A. Yes, sir.

Q. You say you think Lewis didn't have anything until he got to Gibson Station?

A. Well, until he came out to our camp where we camped at Gibson Station.

Q. You was out in the prairie, camped?

166 A. Yes, sir; right at the edge of the timber; we were right on the edge of the prairie; the timber was right at us.

Q. That is where you staid all night?

A. Yes, sir.

Q. You say you did not say before the commissioner there was just two Winchesters; that you always insisted there were three?

A. Yes, sir.

Q. I believe you stated you did not know that there was an indictment pending against you in this court?

A. No, sir; I did not know it.

Q. You say when you made this confession down there to your brothers, and went to Judge Wood and told him how it was, that you did not know there was any indictment here against you?

A. No, sir.

Q. I will ask you now at whose instance it was you went before Judge Wood?

Mr. BARNES (counsel for defendant). I object to that, because I do not think it is competent.

The COURT. I think he has a right to explain how he came to make the statement. He stands here as an accomplice by his own statement.

The DISTRICT ATTORNEY. At whose instance was it that you went before Judge Wood and made the statement?

A. Of my brothers.

Mr. BARNES (of counsel for defendant). Never mind talks between you.

The WITNESS. I made a statement on my own accord to them.

The DISTRICT ATTORNEY. Who advised you to go before Judge Wood?

A. I went to Dodson, and he said he would go to Judge Wood.

167 Q. He is a lawyer?

A. Yes, sir.

Q. Is he some relation of yours?

A. Yes, sir.

Q. What relation?

A. Uncle.

Q. Had you ever heard of Mr. Kinney up to the time you made that confession to Judge Wood?

A. No, sir.

Q. You do not know how long after that it was that he came down there and got this written statement?

A. No, sir; I don't remember how long it had been.

Q. You had some trouble down in Texas afterwards in which you were convicted of simple assault?

A. Yes, sir.

Q. That is all you were convicted of?

A. It was a pistol case and simple assault.

Q. You were not convicted of any assault with attempt to kill, or anything of the kind?

A. No, sir.

Q. Mr. Barnes asked you if you had ever heard of a man by the name of Whitley; you answered that you had; I will ask you if you know him?

A. No, sir; I don't know him, only heard of him; I heard of him in the Territory.

Q. At whose place, do you remember?

A. At Barber's, as well as I remember.

Q. That is what you say in your examination here. Where did you learn that Whitley was when you were at Barber's?

A. I learned in Williamson County, Texas.

Q. That is all you knew of Whitley?

A. Yes, sir.

Q. Do you know where John Barber was at the time you heard of Whitley?

A. He was at home there, at old man Barber's.

Q. Mr. Barnes asked you about being at Lewis's so long; I will
168 ask you if you, while you were there, paid board, or did he just keep you?

A. He just kept us.

Q. You paid no board?

A. No, sir.

Q. Did he ever ask you for any pay?

A. No, sir.

Q. He was just keeping you there without pay?

A. Yes, sir.

Q. If you were staying there without pay, he was keeping you without pay?

A. Yes sir.

Q. You have stated the reasons that you turned that paint mare loose, that you picked up a paper at old man Barber's, and saw she was advertised as stolen property, and you turned her loose?

A. Yes, sir.

Q. Now, then, there is one thing—the date of that robbery, when it was; whether it was the 15th or 16th; you say that it was on Friday?

A. Yes, sir.

Q. You say that whether the robbery was on the 15th or 16th it was on Friday?

A. Yes, sir.

Q. If Friday was the 15th it was on the 15th?

A. Yes, sir.

Q. Mr. Barnes asked you about making a statement here about something that occurred on the 14th and upon the 15th, at a time when you had it in your mind that the robbery was upon the 16th; so if the rob-

bery actually occured on the 15th, everything you related about when your mind was that the robbery was on the 16th, would date a day back of that?

A. Yes, sir.

Q. The occurrences that you say occurred upon the 15th, if Friday was the 15th—the occurrences you say that occurred on the 15th, if when you thought that Friday was the 16th, of course would occur on the 14th?

A. Yes, sir.

Q. In regard to this conversation you had with this man when you got back to camp; I believe that was Saturday night, was it not?

A. Yes sir.

169 Q. The robbery occurred on Friday; Saturday evening between sundown and dark you got back there and found all these men there?

A. Yes, sir.

Q. I understood you to say, in your examination-in-chief, you had a conversation with them there that night?

A. Yes, sir.

Q. It was afterwards that Lewis had this talk about having shot somebody and heard the woman scream?

A. Yes, sir.

Q. It was n't all in one conversation?

A. No, sir.

Recross-examination. By Mr. BARNES:

Q. This attorney was with you when you made this confession before Wood?

A. He went with me to Tyler, and I went in and made the confession to Judge Woods.

Q. You state you had a talk with him, and so on; do you deny that he fixed or helped you to fix up the statement?

A. He had nothing to do with the statement.

Q. You and him talked it over; he was with you, was he?

A. He went with me to Tyler.

Q. You filed a sworn complaint against these other fellows before you made any statement, didn't you?

A. I made the sworn statement before Judge Woods first.

Q. When you made that sworn complaint you left your name and Rogers' out as two of the conspirators that had been engaged in it?

A. I don't think I left out any names.

170 Q. In that sworn statement you said that this conspiracy was formed on the 12th of June and carried out on on the 16th, didn't you?

A. I don't remember that I did, sir.

Q. Do you deny that you did?

A. I made the statement to Judge Wood.

Q. Do you deny that in that sworn statement you made to Judge Wood that you stated this conspiracy was formed on the 12th of June and carried out on the 16th?

A. If I made the statement it was carried out on the 16th, I was misaken; I have learned since it was on the 15th, on Friday night.

Q. I want to know whether you swore the conspiracy was formed on the 12th of June; did you swear that?

A. I don't remember whether I did or not.

Q. You deny now that you knew you were indicted in this court for murder by the name of Foster.

A. Knew nothing of it.

Q. Don't you know that indictment is pending here to-day, has never been nolle prossed against you?

A. I never knew nothing about it.

171 JAMES B. HASTY, having been duly sworn, was called upon behalf of the Government, and, being examined by the district attorney, testified as follows, to wit:

Question. What is your name?

Answer. James B. Hasty.

Q. Where do you live?

A. Cherokee Nation.

Q. What part of the Cherokee Nation do you life in, near what place?

A. Well, it is about 8 miles or 10 northeast of Tulsa, as near as I could tell.

Q. Where did you live in June, 1888?

A. I was working for a man named Alex Lewis.

Q. This defendant here?

A. Yes, sir.

Q. Do you remember the fact of hearing of a train robbery along during the summer of 1888, which was said to have occurred at Verdigris?

A. Yes, sir; I remember of it.

Q. Where were you living at that time?

A. I was working for Mr. Lewis at that time.

Q. When did you commence working for him, and when did you quit?

A. I commenced in May as well as I remember.

Q. When did you quit Lewis?

A. Sometime in June, I do not remember just the date at all.

Q. Sometime in June, after you heard of this robbery?

A. Yes, sir.

Q. Now, do you know Hollaman?

A. Yes, sir.

Q. The witness who has just left the stand?

A. Yes, sir.

Q. Did you know Queen in his lifetime?

A. Yes, sir.

Q. Did you know Jim Johnson, a man who went by the name
172 of Jim Johnson?

A. Yes, sir.

Q. Did you know a man by the name of Rogers or Holloway?

A. Yes, sir.

Q. What name did he go by when you knew him?

A. Rogers, I think.

Q. Where was Queen living at the time of this robbery? Where was he staying, do you know?

A. He was staying at Mr. Lewis's part of the time.

Q. When did you first see Jim Johnson, Rogers, and Hollaman, and where?

A. I saw them at Mr. Lewis's directly after I went there.

Q. How long had Queen been living there?

A. I could not tell; he was there when I went there; I could not say how long he had been there.

Q. Please state if Johnson, Rogers, and Hollaman came there together or separately?

A. They were there when I went there; I don't know anything about when they came there.

Q. You say they came there shortly after you came there; I am not talking about Queen—that they came to Lewis'?

A. I had been working up north about a mile from there, and they came in at different times; sometimes they would go off and be gone a day or two, and sometimes they would not be gone so long; I don't know where they had been; anything about it.

Q. Do you remember when this robbery was; about what time?

A. As well as I remember it was Friday night, 15th of June, 1888.

Q. Now, along about that time, just prior to that, where were these men? Where were they staying?

A. They were there at Mr. Lewis's.

173 Q. Queen, Rogers, Johnson, and Hollaman?

A. Yes, sir.

Q. What horses did they have, if you know?

A. They had several there; one kind of a roan, as nigh as I could call the color, light roan horse, and a darker-colored horse not quite so light, and then they had a spotted mare there.

Q. What horse did the defendant have?

A. He had a bay horse. He had some colts. He had a bay mare and a bay horse, gelding.

Q. Who worked the bay horse and the bay mare?

A. I did.

Q. On the day of the robbery please state if you were working them?

A. Yes, sir.

Q. Both of them?

A. As well as I remember was working bay stallion and dark-colored horse.

Q. Where was the gray mare?

A. I was working these three to a prairie plow.

Q. Did he have any other gray horse there, iron gray or any other kind?

A. No; he had no other gray except this gray mare.

Q. Now then, on the day of the robbery, please state if this defendant was at home?

A. No, sir; he was not at home.

Q. Were these other men at home on that day, any of them?

A. No, sir.

Q. When did they leave?

A. They left a day or two—not longer than that—before that.

Q. What time in the day?

A. Well, I can not say just what time; it was in the morning.

Q. They left in the morning, did they?

A. Yes, sir.
Q. Who left first?
A. I didn't see them when they left—when they first started off.
174 Q. Where were you?
A. I was going out to work.
Q. Were all of them at breakfast that morning?
A. Yes, sir.
Q. You went out to work after breakfast?
A. Yes, sir.
Q. When you came back to dinner was there any of them there?
A. No, sir.
Q. When did you next see them, and who came home first?
A. Mr. Lewis is the first one I saw; I saw Mr. Lewis and another gentleman I didn't know.
Q. When was that?
A. It was the next evening after the robbery.
Q. You say the robbery was on Friday?
A. Yes, sir; that was Saturday evening I saw him, as well as I remember.
Q. How did they come home, these two men?
A. They came horseback, as well as I remember.
Q. What horse was Lewis riding?
A. I don't remember of seeing their horses; I don't remember it if I did.
Q. Well, the horse came home there, and was turned out; I suppose you know what horse it was?
A. Yes; I didn't see the horses when they came in.
Q. Do you know what horse he was riding?
A. Yes, sir.
Mr. BARNES (of counsel for defendant). He can not state it; he says that he did not see the horse that he rode; that he knew it from what somebody told him; of course that would not be competent.
The COURT (to witness). How did you know the horse he was riding?
A. I heard them say.
The COURT. Who?
A. Mr. Lewis.
The DISTRICT ATTORNEY. What horse?
175 A. He didn't say what horse it was; they came in horseback.
Q. Do you know what horse was gone away from there of his?
A. They were all gone as far I know; I only had these three that I was working breaking prairie.
Q. I will come back to that after awhile. Lewis and a man you did not know came home on Saturday evening. About what time did they get home?
A. It must have been the middle of the afternoon; I could not tell just exactly.
Q. When did the others get back, if they came at all?
A. The same evening, I think.
Q. Well, who came first after Lewis and the strange man, if you know?
A. I don't remember how they did come, hardly.
Q. You say they all came in; that Lewis and a man you did not know came in first?

A. Yes, sir.

Q. Then, the same evening you say, the other men came in?

A. Yes, sir.

Q. Were they all there for supper?

A. Yes, sir.

Q. Now, they all left there, according your statement, either a day or two days before the robbery, you are not certain which, in the morning?

A. Yes, sir.

Q. They were all there for breakfast; when you came back for dinner none of them were there. On the Saturday after the robbery on Friday they all came home, and that evening Lewis and a man you did not know come first, and the others came afterwards, in what order you do not know?

A. Yes, sir.

Q. They all took supper there together?

A. Yes, sir.

Q. What became of them that night?

A. As well as I remember they slept out under some trees out from the house a little ways.

176 Q. Do you remember whether Lewis slept out with them or did he stay in his house?

A. I could not say as to that for certain.

Q. Had you heard of the robbery when they got home?

A. No, sir; I hadn't.

Q. How long after they got home before you heard of the robbery?

A. I heard it either Sunday or Monday after that, Monday maybe it was, as well as I remember.

Q. These men slept out on Saturday night; you don't know about Lewis, whether he did or not. Sunday morning please state if they eat breakfast there.

A. As well as I remember I did.

Q. Then what became of them?

A. They went away.

Q. Do you know of your own knowledge where they went?

A. No, sir; I do not.

Q. Pausing here a moment to go back to ask you another question I will ask you if you heard anything Lewis said, or did he make any statement to you as to where he was going when he left home?

A. Yes, sir; he said it in this way, as nigh as I can tell it word for word, that he was going down to Gibson Station to look himself up a claim, as he claimed a right through his wife.

Q. When was it you had this talk?

A. A short time before that he went away, a day or two, something like that.

Q. His wife was a Cherokee, was she?

A. Yes, sir; so I have been informed.

Q. On Saturday morning you say they all left; do you know where they went of your own knowledge?

A. No, sir; I don't.

Q. Did you see anything more of them after that?

A. Not that day I didn't.

177 Q. When did you next see them?

A. I saw them the next day; I think it was Monday.
Q. Where did you see them?
A. I saw them at Lewis's.
Q. How long did they stay there on Monday?
A. I could not say.
Q. Did they stay there all day?
A. You see I was out at work and I could not see everything that transpired, you know.
Q. I understand that. That would be Monday that you saw them?
A. Yes, sir.
Q. What time of day was it you saw them, Monday, do you remember—was it Monday or Tuesday, or do you remember—you think it was Monday? Was it in the evening, or in the morning, or noon when they came there?
A. The next I remember of seeing them was in the evening, but just what time I could not say.
Q. It was in the evening of Monday you saw them?
A. Yes, sir.
Q. Was Lewis with them? And was he away from home during that time?
A. Yes, sir; he was away Sunday.
Q. Did he come back with them on Monday, or do you remember?
A. I don't remember whether he did or not.
Q. Do you remember whether they staid all night Monday night at Lewis's or where they did stay?
A. I don't remember how that was.
Q. What became of them after they came to Lewis's on Monday evening, what became of them after that, if you know?
A. I don't know as I remember.
Q. Did you ever see anything more of them?
A. I would see them occasionally; once in a while they would come in there and stay awhile and then go away.
Q. When was Lewis first arrested if you remembered.
178 A. I would not like to state the time; it was shortly afterwards this transpired.
Q. Do you know who arrested him?
A. No, sir; I do not know what officer it was.
Q. You say, now, you first learned of this robbery on Sunday or Monday; you have also said that on Sunday morning the party left Lewis's house, and they did not come back again until Monday evening?
A. Yes, sir.
Q. Where was it you learned of the robbery, and from whom, if you remember?
A. I don't remember how I learned it or who from.
Q. You did not learn it from either of these men?
A. No, sir; I don't think I did.
Q. Where were you on Saturday evening when these people came in there at Lewis's?
A. I was at Lewis's house Saturday evening.
Q. Had you quit work or was you still at work?
A. I had quit work when they got in.

Q. Had you quit work before Lewis got in?
A. No, sir; I had not gone out as well as I remember.
Q. Did you work on Saturday evening at all?
A. No, sir.
Q. Your recollection now is that you did not work on Saturday evening at all?
A. Yes, sir.
Q. Who put up the horse that Lewis rode?
A. I don't know.
Q. Did you see it after it got home?
A. I saw some horses off down out in the field; I wasn't down there; I was in the house.
Q. How many horses were there?
A. There was only two.
Q. What horses were they?
A. There was a kind of a roan, and the other one was a bay I think.
179 Q. Did you learn the man's name who was with Lewis?
A. No, sir; I did not.
Q. Do you know what horse Lewis was riding when he was arrested?
A. Not only what I heard.
Q. What became of the iron gray?
A. I suppose that the marshals taken the horse; it left there; I don't know where it went to.
Q. Which one of the iron gray horses was that?
A. There was only one there; there was one gray and one iron gray.
Q. You worked the gray mare?
A. Yes, sir.
Q. That gray mare, I suppose, belonged to Lewis. What other one did you work?
A. I worked a dark, you might call him a brown horse.
Q. What other?
A. Bay, stallion.
Q. Where was this iron gray horse during the time that these men were away from there when the robbery occurred?
A. I don't know.
Q. Was it at home?
A. No, sir.
Q. You don't know who rode it away if anybody, but it was not at home?
A. No, sir; it was not there.
Q. Was that a mare or a horse?
A. Horse.
Q. Now, then, during the time they were gone the iron gray was not there. Please state whether or not the iron gray was returned when the party came back, whether it came back there? You say it was gone during the time that these men were gone, during the few days they were gone during the time of the robbery?
A. Yes, sir.
Q. When did it come back again, if it ever come back?
A. I would not say.

180 Q. Did it ever come back?
A. Yes, sir; I saw the horse afterwards.
Q. You saw it where?
A. I saw it at Lewis's house.
Q. Was Lewis at home when he was arrested?
A. No, sir.
Q. Do you know what horse he was riding at that time when he was away?
A. Not to a certainty I don't.
Q. I will ask you if you ever saw the iron gray after the time he was arrested?
A. No, sir; not as I mind of.
Q. You don't know what became of it of your own knowledge?
A. No, sir.
Q. How was it branded?
A. Branded with a J 2, bar across it, 171.
Q. Where was the 171, do you remember, with relation to this other?
A. Right over it, as well as I remember.
Q. Whose brand was the 171 brand?
A. Mr. Lewis's.
Q. Do you know whose brand the J 2 was, and the bar?
A. Belonged to Mr. Miles, I understood.
Q. Do you know who put that 171 on there?
A. No, sir; I do not.
Q. You know that was Mr. Lewis's brand?
A. Yes, sir.
Q. You say that you worked three horses on that occasion?
A. Yes, sir.
Q. I will ask you if you were working any horse with that brand upon it?
A. Yes, sir.
Q. Which one?
A. A little bo*r*'n horse.
Q. You say it had the same brand?
A. Yes, sir.
Q. The J 2 bar and the 171?
A. Yes, sir.
Q. There was a J 2, the bar ran across it, and then 171 above it?
A. Yes, sir.
181 Q. Now, then, you say the little brown horse you were working had the same brand on it?
A. Yes, sir.
Q. What became of the brown horse?
A. There was some marshals came out and taken it away from me while I was at work plowing.
Q. Who were they?
A. Mr. Thomas, Charley Leflore, and an Indian police I didn't know.
Q. Charley Leflore is here, is he not?
A. Yes, sir.
Q. Was there anybody with them when they took the horse away from you?

A. No, sir; only these three.
Q. Do you know of your own knowledge what became of it after that?
A. They came on down to the house.
Q. What was done with him there at the house?
A. I suppose they took him off with them.
Q. Do you not know what they did with it?
A. No, sir.
Q. Or who they turned it over to, or anything of the kind?
A. No, sir.
Q. All you know is that they took this brown horse from you that way, which was branded J 2, bar, and over it 171?
A. Yes, sir.
Q. Was that your horse?
A. Yes, sir; that was the horse I was working; Mr. Lewis gave me that horse to work.
Q. Did you ever work the iron-gray that was branded the same way?
A. Not a great deal.
Q. Did you work it any?
A. Yes, sir.
Q. Who gave it to you to work?
A. Mr. Lewis.
Q. Then he was claiming these horses, was he?
A. Yes, sir; I suppose so, as far as I know; I don't know otherwise.
Q. Did you see Lewis while he was under arrest?
A. Yes, sir.
182 Q. Where?
A. I saw him east of Ka-too-sey.
Q. Who had him?
A. I saw several marshals there; I would not say just who had him under arrest; I saw him at the marshals' camp.
Q. Did you remain with him?
A. Not long.
Q. Why did you leave?
A. Because I was kind of stirred up; I was a little frightened.
Q. Did you have any talk with him at that time at that camp?
A. Not at that camp.
Q. Did you have any talk with him at any camp?
A. Yes, sir; they moved the camp down at Tulsa, and I saw him there.
Q. Was he under arrest there?
A. Yes, sir.
Q. What did he say to you about it?
A. I went down for a settlement with him for the work I had done.
Q. Go ahead; if he said anything to you about leaving at that time; reasons why you should leave; where you should go to; I want you to state it.
A. I went to him and asked him if we hadn't better make a settlement; he says, "Yes, I guess so." He wanted to know how much he owed me, and I don't remember now just the amount that I told him, and he gave it to me; I won't say the exact amount, for I have forgotten; and we talked on, and the conversation came up that I was in danger, my life was in danger.

Q. What did he say about that?

A. He said, "If I was in your fix I would go over northwest to some of the Territories; I would not stay about here at all."

Q. Why?

A. He said he was of the same opinion I was, that my life was in danger.

Q. Did he say why your life was danger?

A. Some of these bad man; no names mentioned that I remember.

183 Q. Did he give any reason why you were in danger from them?

A. No, sir; he did not; not as I remember.

Q. To go away from there to some of the Territories; did he name any of the Territories?

A. Yes, sir; Washington Territory; somewheres away north, as well as I could say.

Q. You say that he told you he thought your life was in danger; you thought so too. Do you remember what time you did leave this place?

A. No; I don't.

Q. Do you remember how long it was after this robbery?

A. No, sir.

Q. Was there any men folks living at the house at Lewis, except yourself the day or two before this robbery was committed, and on Saturday evening when they returned home? Were there any men at the place with you during that time?

A. No, sir; Mr. Lewis's boys were there.

Q. How old were his boys?

A. I don't remember.

Q. Were they grown men?

A. No, sir; I would suppose they were up in their teens, as well as I could tell; I would hate to say——

Q. They were lads—youths?

A. Yes, sir.

Q. Did you know of any haystacks around that place at that time, strawstacks or haystacks?

A. No, sir; there was some hay in the barn down southeast of the house like, but there wasn't any at the house.

Q. I don't mean at the house; how far from the house was it?

A. Some 100 yards or over.

Q. That is what I mean. How far were you at work from the house?

A. I worked at two different places.

184 Q. How far from the house, the nearest?

A. The first work I done was about a mile or over, as nigh as I can tell.

Q. How far were you working upon the 15th?

A. I was working right east of the house; I guess three-quarters of a mile, or something like that.

Q. I believe you stated you did not know where this party went on Sunday morning after the robbery?

A. No, sir; I don't know where they went to.

Q. On Saturday evening they got there, slept out that night, Sunday morning had breakfast, went off that day, came back Monday evening, and

when they came back, you say, Lewis came back with them? I believe that was your statement; I am not certain you made that statement; may be you did not. Did Lewis come back with them Monday evening, or did he not; or did he come behind or ahead? I don't care how it was; I want you to state how it was; I may have been mistaken about you having said it. I am talking now about Monday evening. They went off Sunday morning?

A. Yes, sir.

Q. You said that Lewis came back on Saturday evening?

A. Yes, sir.

Q. On Monday evening, when they returned after being away Sunday and Monday, I will ask you if Lewis returned with them?

A. As well as I remember, he did.

Q. You think he did, but you are not certain whether he did or not?

A. Yes, sir; you see this is a long while for a man to remember all these little things that transpire; it is mighty hard thing for a man three year ago to mention just exactly what transpired; it is hard for me; if I have got off anyway it is not my intention. I am going to tell it as straight as I can.

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Q. You said they all ate supper there Monday evening?

A. Yes, sir.

Cross-examination by Mr. BARNES:

Q. I will ask you first about these brands on these horses. Didn't one of the horses have a J 2 brand with the cross through it, on the shoulder, and didn't the other one have the same brand on the thigh, and then wasn't the 171 brand, instead of one being right over the other, wasn't it put on the hip and near the back bone?

A. I won't be certain about it, but I think not. I won't be right certain about it, but I know the brand was there.

Q. I don't care so much; I just want to test your recollection by that matter.

A. It has been a good while ago.

Q. Isn't it a fact that the bar ran diagonally across the J 2 instead of straight across it?

A. It wasn't quite straight, but it was pretty near it.

Q. Did it have any top on the J?

A. Yes, sir.

Q. How much top?

A. I don't know; I know it had a top on it.

Q. Now, about the brands; you are not positive as to the location; there was a J 2 brand on it and a 171 brand; isn't that about all you know?

A. Yes, sir; I know that to be to a certainty. I am going to tell this right; if I don't it is ignorance.

Q. You say that Queen had been about there; he staid at Lewis' some of the time before this robbery?

A. Yes, sir; he was there part of the time; part of the time he was away.

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Q. Queen had some cattle that Mr. Lewis was holding, didn't he?

A. Yes, sir.

Q. He had been holding them for sometime, had he not, six months or more?

A. I could not say; they were there when I went there; I don't know when they went there.

Q. He was around there sometime before any of these other men were ever there, was he not?

A. I have understood so; it is not to my knowledge.

Q. Was it not to your knowledge that he was there before these other men came there? How long had you been working for Lewis?

A. Well, somewhere in the neighborhood of a month, or maybe a few days less or a few days more; I would not say just the number of days, but it was in the neighborhood of that.

Q. "These men," you speak of them as though all of this crowd of men you saw there about the time of the robbery had been there all the time. There was some of them that had not been there, was there not?

A. Some of them came after others.

Q. Queen was there awhile before any of them came, wasn't he?

A. Not that I know anything about; only what I heard; I wasn't there; I could not know he was there, when I wasn't there; he was there when I went there.

Q. You do not know exactly how long before the robbery it was that these men were around there. Where were you working first?

A. I was working up north, a little to the right; north of where Mr. Lewis lived, across the creek; breaking prairie.

Q. Was that on a piece of land, on a farm, that he was opening up for Mr. Baird there?

A. Yes, sir.

Q. How far was that from Lewis's?

187 A. Oh, something over a mile; I would not say just how far it was.

Q. How far did Lewis live from Tulsa?

A. I don't know; it is quite a litttle ways.

Q. About 5 or 6 miles?

A. Yes, sir; it is all of that; maybe more; it is quite a little ways.

Q. How much more would you think?

A. I do not know; I never measured it.

Q. How long did you work up there on this Baird land?

A. I would not like to say; I worked there quite a little spell.

Q. Several weeks?

A. No, sir. I don't know just how long I was there; I could not say; I worked up there, though.

Q. At the time of this alleged robbery and killing, you were plowing down there where Mr. Lewis lived?

A. Yes, sir; right east of where he lived.

Q. How far from a house?

A. Maybe three quarters of a mile; I would not say how far; east of the house, on the ridge; quite a little ways from the house, across a little creek that run along by the house.

Q. Strip of timber between where you were at work and the house?

A. Yes, sir; not heavy timber.

Q. You were at work quite a little ways off?

A. Yes, sir; upon the ridge, plowing north and south.

Q. Did you not, in your examination in chief while ago, first state to the district attorney that you were plowing the only gray horse that Lewis had, except a colt, or something of that kind?

A. There is a gray mare. He had no right gray horse that I know anything about. He had a gray mare.

Q. Did he have this horse when you went there?

A. Yes, sir.

188 Q. You were plowing this gray mare at the time you quit work on the Baird land wasn't you?

A. To the best of my knowledge I was.

Q. Do you know anything about Mr. Lewis trading a blue horse there to Queen some four or five days or a week before this occur'ence?

A. I remember something about trading horses, but how it was and what it was I would not like to say.

Q. You know there was a trade made?

A. Yes, sir.

Q. You know you were plowing the gray mare when you quit work on the Baird farm?

A. Yes, sir; as well as I remember now.

Q. Burke Lewis is one of these boys' names is it not?

A. Yes, sir.

Q. Burke Lewis claimed an interest in that gray mare you were plowing with, and then whatever that interest was; do you know anything about the old man and him making a trade, in which he let him have a colt for the interest he claimed in that gray mare?

A. No, sir; I didn't see anything of that kind transpire; if I did, I have forgotten it.

Q. Do you know whether he claimed an interest in the gray mare?

A. No, sir; I do not.

Q. You know there was some sort of a trade between the old man and the boys about some of those colts? He had some colts, didn't he?

A. Yes, sir.

Q. Yearlings, two year olds, and three years olds?

A. Yes, sir; what the train didn't run through and kill.

Q. How many head did the train kill for him?

A. Some three or four; I don't recollect how many.

Q. How many horses did he have at that time?

A. I don't know.

189 Q. These were young stock you speak of?

A. Yes, sir; young stock that run out on the prairie that I didn't handle, that I knew nothing about; I knew they were there; that is all I knew.

Q. You do not know that the trade he made with the boy was to give him one of these younger animals for the interest that he claimed in the mare?

A. No, sir; I have forgotten it if there was anything of that kind. There was some trade; what it was I won't say?

Q. The old man has that gray mare yet, has he not?

A. I do not know.

Q. Do you know whether he bought this plow horse and this brown horse from Queen, and then afterwards traded him the blue horse back?

A. Not only what I heard them talking.

Q. You understood that was the case?

A. Yes, sir.

Q. But just when he bought the blue and the brown horse from Queen you do not know?

A. No, sir.

Q. Anyway, you worked them there?

A. Yes, sir.

Q. Do you remember the team you worked when you worked there on the Baird place?

A. I had them kind of mixed up a time or two.

Q. Before you quit working there this blue horse you speak of was taken out of the team while you were at work for Baird?

A. Mr. Lewis changed me another in that once's place, I believe, while I was plowing on the Baird land.

Q. Put the gray mare in the place of that one, didn't he?

A. Yes, sir; I think so; as well as I recollect that was the case.

Q. Do you remember whether the horse secured to Burke was a gray yearling horse, and whether you did not witness the trade?

190 Buck or Burke, his boy? Did you witness the trade?

A. No, sir; I did not; not as I remember of, I didn't.

Q. Do you remember the old man stating at the time of that trade that he wanted to learn the boys how to do business, and they had better draw a note, and you witnessed it?

A. I remember something of a note, but how it was I don't know.

Q. Don't you know that you witnessed it?

A. I can't say that I did, but I remember something about a note; it has been a good while ago; of course I can not call everything up exactly, but I do know something about a note, but what it was I would hate to say.

Q. There was nobody there then at the time except you and the old man and the boys?

A. I don't remember whether there was or not.

Q. You do not think there was, do you? There was no other men there at that time, was there?

A. As well as I recollect, there was not.

Q. Do you remember that in fixing the date of that that you went to the valise of your's to get an al*a*manac?

A. I certainly mind that I had an al*a*manac in my valise; I remember that, and I have one yet.

Q. We will pass that for a moment. I believe you say these men came back there on Saturday, and that Lewis came in before you had gone out, you first said, but you took that back; that some of these parties came in after you quit work; you took that back, saying you did not go out that evening, that Lewis came in there, although you did not see the horses? Still, you saw the two horses that were rode back, one was a roan

191 and the other was a bay. Now, then, you state that those men after they came back they went off somewhere to sleep, said they went off about night, or before night, right after supper, and that Lewis went off with them; is that right?

A. Did I say so? I don't believe I did; I don't remember it if I did.

Q. Didn't you say that Lewis went off with them that night when they went out?

A. If I did I don't remember it.

The DISTRICT ATTORNEY. His statement was that he did not know whether Lewis went out with them or not.

Mr. BARNES (of counsel for defendant). You did not say that Lewis slept out with them?

A. There was a night or two that Lewis slept out with them; when it was I don't remember, whether it was that night or other nights. I heard this man Capt. Queen, as they call him, ask him, and he staid out with him a little ways from the house; there was a good many of them.

Q. There was a good many of them; they came and slept about this haystack?

A. Yes, sir.

Q. He would go over to that haystack with them?

A. Yes, sir.

Q. You didn't know what they were up to?

A. No, sir; it was none of my business.

Q. Now, on that particular night, did he go out there with them that night?

A. I am not positive; I would hate to say whether he did or not; he was there that night.

Q. How long had the old man and the boys been talking about this trade for this gray colt, when it was made; do you know?

A. I don't know.

Q. If there was a note drawn, do you know when it was drawn, what time of day or anything of that sort?

A. I don't remember signing it. It is hard for a man to remem-
192 ber everything three or four years; it is for me.

Q. Look at this note, and see if you recognize it or not?

A. I might have seen it, but I have forgotten.

Q. Can you not, by looking at that, recollect that you have seen it? There is your signature there?

A. That is certainly my handwriting, to a certainty.

Q. Don't you know you got an almanac down to look for the date? Don't you know that was written that night there when you were all talking about this trade, and that Lewis was not camped out with these men at all that night?

A. I do not know; I would not say positive that he was out there that night, but that is certainly my signature.

Q. You remember that was written at night, when there was nobody at the house but your folks?

A. I don't remember.

Q. Isn't that your recollection?

A. I would hate to say.

Q. See if you can not call it to mind, showing that Mr. Lewis didn't go and camp out that night, but that he was in his house; see if you can not call to mind this transaction there among you, the boy and Lewis, in regard to this colt, and if it wasn't for the interest the boy claimed in——

A. I know there was such a trade going on; I heard that; but when or how it was I would not like to say, for I am not just positive.

Q. You know that you did not witness anything drawn up in the day time, don't you, and before supper on that day, if this was the 16th, if that was Saturday?

A. That is certainly my handwriting; that is my signature; but I don't remember when it was; I am honest about it.

Q. You accept the signature?

A. Yes, sir.

193 Q. You accept the fact that no men were present except yourself, the old man, and these boys, when that was done; won't you accept the fact that it occurred after supper that night?

A. I could not tell you, I told you, positively when it occurred.

Mr. BARNES (of counsel for defendant). I want to introduce the note to the jury.

The DISTRICT ATTORNEY. I want the jury to notice the date on the bottom has been changed from the 15th to the 16th.

Mr. BARNES (of counsel for defendant). You say that when this matter was going on there was nobody present except you folks; you can not remember now whether it was in the daytime or night?

A. I told you I don't remember anything about that note, but that is certainly my signature.

Q. Now, when these parties, Thomas and LeFlore, came on to you in in the field and this Indian police, you say they took how many horses from you?

A. One.

Q. Which one was that?

A. I believe they call it a brown horse.

Q. Was Lewis under arrest at that time?

A. I could not say; I am not certain about that, but I think he was; it was just somewheres about that time that he was arrested.

Q. Did they draw their guns on you?

A. No, sir; if they did, I never saw them.

Q. You gave the horses up, anyway?

A. Yes, sir.

Q. You speak of these men being back there; now, is it not a fact that after this robbery you never did see anybody back there, except at one time, or a time or two, you saw Queen there one time and Rogers, and then that you saw John Barber there with them?

194 A. I saw John Barber there with them, was the first time I ever saw John Barber.

Q. They were not all back there as a party, then?

A. Yes, sir; they were all back there together.

Q. The whole crowd?

A. Yes, sir; they were once.

Q. Barber included?

A. I didn't see Barber then; as well as I remember they were back there after this occured.

Q. You say the first time you saw Mr. Lewis after his arrest he was in Marshal's camp, and he did not say anything to you about going away that time, but it was the next time you saw him?

A. Yes, sir; that is right; not as I remember he didn't say anything at the first time.

Q. The second time you saw him there don't you know that he was going to be turned loose by Thomas?

A. No, sir; I did not.

Q. I will ask you if you knew a man called Bill Jones?

A. Yes, sir.

Q. I will ask you if you know another man called Quin McChristian?

A. Yes, sir.

Q. Did you go to Jones to work after you left Lewis's?

A. Yes, sir.

Q. How long afterwards?

A. Well, shortly; I went right from Lewis's there; went there to work.

Q. Did you tell him shortly after you went there that Lewis was not in that robbery?

A. I don't know whether he was or not.

Q. Did you tell Jones he was not?

A. Not as I remember anything about; I don't know whether he was or not; I could not say that he was.

Q. Do you know whether you told him whether he was or not?

A. I don't remember saying anything of that kind; if I did I
195 don't recollect it.

Q. You do not remember saying it one way or the other?

A. No, sir.

Q. Do you remember telling him that he wasn't away from home at that time?

A. No, sir; I do not.

Q. Did you tell him that you had been offered $250.00 by the deputy marshals to swear against Lewis?

A. No, sir; I don't remember saying anything of the kind.

Q. Did you tell him that you had been offered $250.00 to swear against Lewis, and if Lewis would pay you more you would swear for him; that you would swear for the man who would pay you the most?

A. No, sir; I don't think I ever said anything of the kind.

Q. Did you ever say anything of the kind to McChristian in his hearing, or to Bob McChristian or in his hearing?

A. Not as I remember anything about; I was assaulted by him once.

Q. Do you know a man named Emmett Smiley, a merchant up here at Tulsa?

A. Yes, sir; I am acquainted with him.

Q. Do you know where Bynum's store is?

A. Yes, sir.

Q. Do you remember being there soon after Lewis's arrest and talking to Smiley about it?

A. I talked to so many who knowed I was working there, I don't remember who all I did talk to; they were asking me if I worked there and what I thought about it, and so and so.

Q. Do you remember talking to him about it after the arrest of Lewis? Did you ask him what Lewis was arrested for there at Bynum's store?

A. I don't remember anything of the kind.

196 Q. Do you remember saying that in talking with him, you said, "they had old man Lewis arrested, did they?" and he said "Yes," and then you asked him what for, and that he told you train robbery and murder, this train robbery and murder referred to down here? Do you remember that conversation?

A. No, sir; I remember something similar to that.

Q. After he told you that did you say this thing to him at Bynum's store: "I can clear him; I was at his house and he was at home; he wasn't away at the time of the robbery?"

A. I do not remember saying anything of the kind.

Q. Do you deny it?

A. I don't remember anything of it.

Redirect examination by the DISTRICT ATTORNEY:

Q. You say you have no recollection of signing this note?

A. I have no recollection of it, but that is certainly my signature; it must be, or else it is a very fine imitation of my handwriting.

Q. When it got there you do not know; or how it was put there?

A. I don't know.

Q. I observe that upon the bottom of this page there is a date changed from the 15th to the 16th; do you know anything about that?

A. No, sir.

Q. Mr. Barnes was trying to refresh your memory with regard to an almanac; I will ask you if that date was not put there originally the 15th; if it was not upon the night of the 16th that this note was signed

197 after these men came home from that robbery, or at least after them came to the house on Saturday night, if that note was not prepared at that time. Mr. Barnes has said as good that it was upon that night, upon Saturday night, after they got home. I will ask you if it was not put there June 15th? I want you to think about it, and that you got your almanac and found they put the wrong date there, and put it to the 16th? Try and remember that? You say you had an almanac in your valise?

A. Yes, sir; I had one there.

Q. You remember you said that upon Saturday evening they all came there, and you said they slept out under some trees that night, whether Mr. Lewis slept there or not you did not know, but Lewis came home sometime in the afternoon; that you did not work that evening; you remember stating that?

A. Yes, sir.

Q. Then you were there during the afternoon, were you not?

A. Yes, sir.

Q. This could have been executed during that time, could it not, after they came home?

A. Yes, sir.

Q. It is a note for $15.00 given by sons to their father?

A. Yes, sir.

Q. Buck Lewis and C. G. Lewis are the sons of the defendant?

A. Yes, sir.

Q. Do you know their hand writing?

A. I can't say as I would know it.

Q. It could not have been done during the time you say they were absent; if it was done upon the 16th at all it must have been done upon the evening of the 16th, after Lewis returned at night?

A. It must have been that way, under the circumstances.

Q. Do you remember of any other transaction of which you ever witnessed a paper for him?

A. No, sir.

198 Q. Do you know of his ever drawing, under any other circumstances, notes, except that night after the robbery?

A. No, sir; none that I remember of.

Q. You said something about having heard that Queen had some trade with the defendant; did you sign any papers upon that occasion; witness any papers?

A. No, sir.

Q. It is only when he has dealings with his sons for small amounts he takes notes, and just after this robbery.

The DISTRICT ATTORNEY. I would like to have the jury examine this note under a microscope. (A microscope is produced, and jury examine paper.)

Q. You still can not remember how you got your name on that note?

A. No, sir.

Q. But I understand you now to say that if it was put upon the note at all upon the 16th that it was in the evening, because they did not get home until in the evening?

A. I wouldn't like to say, but that is my signature, or it is a mighty good imitation.

Q. If it is the signature of yourself it was put upon that note in the presence of yourself?

A. Yes, sir; it must have been.

Q. I wish you could remember whether that occurred on the evening of the 16th. I want to know why, and all about it. It seems you can not remember it, though. Mr. Barnes says it was on the night of the 16th. Now, I would like to know what you think about it. If it was I want to know it, and why they were fixing up these papers with these men out in the brush there just home from a robbery, on the 16th, or the 15th, which is the day before. I will get you to state about how old these boys

199 were, Buck and C. G.

A. I could not say; I don't remember.

Q. Are they here?

A. Yes, sir; they are both here.

Q. Are they of age yet?

A. I hard' think so; of course, I do not know.

Q. This occurred in 1888?

A. Yes, sir.

Q. Last June was three years ago?

A. Yes, sir.

Q. You have no such recollection of making any such statements to any of these parties that Mr. Barnes asked you about?

A. No, sir.

Q Who was it you said assaulted you?

A. Mr. Baird assaulted me last spring.

Q. Mr. Baird is a witness for the defense?

A. Yes, sir.

Q. I will ask you if he was a witness here at the last term of the court for the defendant?

A. I think so.

Q. You spoke about Mr. Christian having assaulted you; when was that?

A. It was some two or three years; I think it was that same summer.

Q. It was after this thing?

A. Yes, sir.

Q. I will ask you if you were not assaulted here at this last term of court by Mr. Baird and George Jones, right out here on the street in front of this court-house?

A. Yes, sir; right down on the steps.

Q. Which one of the Christians was it that assaulted you?

A. Bob.

Q. Is he one of the witnesses here?

A. I could not say; I think not.

Q. Well, I don't care anything about that, then. Is he a brother of the witness who is here?

A. Yes, sir.

200 Recross-examination by Mr. BARNES:

Q. The deputy marshals didn't scare you up any when they came up on you in the field?

A. I don't know that I was scared up any; the plow was not going very well, and I was a little out of humor?

Q. This difficulty you had with Bob Christian was not anything connected with this case, was it? Nothing said between you about this case?

A. There was nothing said.

201 E. N. HOUSE, having been duly sworn, was called up on behalf of the Government, and being examined by the district attorney, testified as follows, to wit:

Question. What is your name?

Answer. J. E. House.

Q. Where do you live?

A. Allaweed, Cherokee Nation.

Q. Where did you live in June, 1888, at the time of the train robbery at Verdigris?

A. I was working for Mr. Holstein.

Q. What were you doing?

A. I was riding the line.

Q. You mean by that you were a cowboy?

A. Yes, sir; I was riding the line betwixt the Creek and Cherokee Nations.

Q. He had a range?

A. Yes, sir.

Q. You were riding the line to keep the cattle in the Cherokee Nation?

A. Yes, sir.

Q. Do you remember of hearing of the robbery at Verdigris, where a man was killed?

A. Yes, sir; I heard about it.
Q. I will ask you if about that time you saw this defendant and any other persons up there about Lewis's, or anywhere in that neighborhood?
A. I seen some men.
Q. Where were they?
A. They were in the house.
Q. Whose house?
A. Willbum Dawson's.
Q. Who were they?
A. Mr. Lewis was all the one I knew.
Q. How many of them were there?
A. There were six.
Q. When was that?
A. I could not say when it was; it was just after the train robbery, though.
202 Q. What were they doing?
A. Playing cards.
Q. Do you remember what day of the week it was?
A. No, sir; I don't.
Q. How come you to see them?
A. I was hunting for my horses; had hobbled them out.
Q. What time of day was it?
A. About 1:00 o'clock in the afternoon, or about that time.
Q. You have seen Hollman here?
A. I don't know him.
Q. You have seen him here as a witness?
A. Yes, sir.
Q. Do you know whether he was one of them or not?
A. No, sir; I could not say.
Q. Did you know Queen?
A. No, sir.
Q. There were six men. Did you see their horses?
A. Yes, sir.
Q. Where were they?
A. Down under the bill, right southeast of the house.
Q. Were the horses hitched?
A. Yes, sir.
Q. Saddled and bridled?
A. Yes, sir.
Q. How far from the house?
A. I don't know how far it was.
Q. 100 yards or 200?
A. Yes, sir; about 100 yards.
Q. How came you to see these people?
A. I run up on them; I was hunting horses; I went up there to see Wilburn, to see if he had seen anything of my horses.
Q. Had you learned at that time that the train had been robbed?
A. Yes, sir.
Q. When did you learn it?
A. That day.
Q. Did you notice whether they were armed?

A. Yes, sir.
Q. How were they armed?
A. I seen Winchesters.
Q. Do you know how many?
A. No, sir; I do not.
203 Q. Any pistols?
A. I didn't see any.
Q. Where were the Winchesters?
A. Laying down or setting down beside them; some of them were laying down.
Q. That is, the Winchesters were laying down?
A. Yes, sir.
Q. You don't know how many there were?
A. No, sir.
Q. What was the defendant Lewis doing?
A. Playing cards.
Q. Did you know Queen?
A. No, sir.
Q. Did you ever see him to know him?
A. No, sir.
Q. You knew none of the others but Will Dawson and Lewis?
A. Yes, sir.
Q. How far was that from Lewis's house?
A. About 2 miles and a half.
Q. How many horses were there hitched down under the hill?
A. Well, sir, I don't know; I didn't notice them particularly, just one there that I noticed.
Q. What one was that?
A. One was a spotted mare; had spots on its side.
Q. What they call paint in that country?
A. Yes, sir.
Q. How many of them were playing cards?
A. Four.
Q. What were the other two doing?
A. One of them was outside and the other one was in.
Q. Was Dawson playing?
A. No, sir.
Q. Dawson was one of the 6; there were five men besides Dawson, and Lewis was one of them?
A. Yes, sir.
Q. Did you learn of the robbery that day, before or after you saw them?
A. Before.

Here court took recess until 1:30 p. m.

204 OCTOBER 22, 1891—2 p. m.

The DISTRICT ATTORNEY. Mr. House you think it was about one o'clock when you went to Dawson's house and found these men playing cards?
A. Yes, sir.
Q. And you had heard that day of the robbery at Verdigris?
A. Yes, sir.

Q. I asked you who you got the information from?
A. Clay Roberts.
Q. How long did you remain there at Dawson's house?
A. Just a few minutes.
Q. There were four playing cards?
A. Yes, sir.
Q. The defendant was one of them?
A. Yes, sir.
Q. And then there was one on the inside?
A. Yes, sir; Clay Dawson on the inside not playing cards.
Q. Where did you go to from there?
A. I went back to the camp.
Q. Did you see anything more of them?
A. No, sir.
Q. That is the last you saw of them?
A. Yes, sir.
Q. Did you go to town?
A. No, sir.
Q. Did you see the marshal?
A. No, sir.
Q. Do you know of anybody that did?
A. No, sir; not at that time.
Q. Where did you see Clay Robins?
A. He came to camp.
Q. Do you know whether he had seen these men before you?
A. No, sir; I don't.
Q. You don't remember any of the horses except the pink or paint horse?
A. No, sir.
Q. How many horses were hitched around there?
A. I didn't count them.
Q. What kind of a place was this?
A. He had just a little place, and a camp there.
Q. Was there any creek near there?
A. Yes, sir; Mingo Creek was near there.
Q. Was the house on the open prairie?
205 A. Yes, sir; just right out on the edge of the timber.
Q. Any woods around there?
A. Yes, sir; off a piece.
Q. How far?
A. Thirty or forty yards, I expect, there was scattering trees?
Q. It was 30 or 40 yards inside of the edge of the prairie where he built the house?
A. Yes, sir.

Cross-examination by THOS. H. BARNES, Esq.:

You say there was some woods 30 or 40 yards off?
A. Yes, sir.
A. A few scattering trees down there towards where the horses were?
A. Yes, sir.
Q. Now, then, you think these horses were about 100 yards from where the house was?

A. Yes, sir.
Q. You don't know how many horses were hitched there?
A. No, sir.
Q. You don't know whether all of them were hitched, or whether some of them were grazing around?
A. No, sir.
Q. You don't know how many horses were hitched there?
A. No, sir.
Q. You didn't see any one but that paint mare that was there?
A. No, sir.
Q. About what time of day was it?
A. One o'clock.
Q. Did you go to town and buy you a pair of boots that day?
A. No, sir.
Q. Where was it you saw Clay Robins?
A. He come to camp.
(Witness excused.)

206 [United States vs. Alex. Lewis, murder. Slip two.]

CLAY ROOBINS, called on behalf of Government, testified as follows, to wit:
The DISTRICT ATTORNEY. What is your name?
A. Clay Robins.
Q. Where do you live?
A. I live at Claremore—four miles from there.
Q. Where did you live in June, 1888?
A. I was living at Tulsa.
Q. What did you do?
A. I was working for William Harlows.
Q. How far was that from where defendant, Lewis, lived?
A. It was about four miles, I guess. Their cow ranch wasn't quite so far.
Q. You know the defendant, do you?
A. Yes, sir.
Q. What was your business—what kind of work were you performing?
A. I was riding after cows.
Q. Cowboy?
A. Yes, sir.
Q. You were riding on the ranch as a cowboy?
A. Yes, sir.
Q. I will ask you if you remember of hearing of the train robbery and of the killing of the man up there, and if so, when you first learned it?
A. It was on Monday morning. The train was robbed on Friday, and I heard of it first, probably would be about the 18th, I guess.
Q. I will ask you if upon Monday after this robbery you saw the defendant?
A. Yes, sir.
Q. If so, where, and with whom?
A. Yes, sir; I saw him that same day.
Q. On Monday?

A. Yes, sir.
Q. Where?
A. It a little log house about a quarter of a mile north of the Mingo section house, we always called it; that is on the Frisco road.
Q. Whose house was it?
A. It belonged to young Dawson.
Q. William Dawson?
A. I can not call his first name; probably it is.
Q. You don't remember his first name. This was Dawson's house?
A. Yes, sir; it was supposed to be his.
Q. What time did you first see the defendant?
A. It was probably about two or three o'clock in the afternoon of Monday.
Q. You first saw defendant about two o'clock?
A. Two to three; I don't remember the exact time.
207 Q. What was he doing?
A. He was playing cards.
Q. Who with?
A. These men supposed to be the train robbers?
Q. How many of them were there?
A. There were four of them besides Mr. Lewis—three or four—probably four.
Q. Did you know any of them?
A. Yes, sir; I knew Kep Queen, and John Barber. That is all I knew.
Q. John Barber was there?
A. Yes, sir. This young Dawson was there, but he wasn't engaged in anything of the kind.
Q. Did you know Holloman?
A. I am not acquainted with him at all.
Q. Do you know whether you saw him?
A. Yes, sir; he was there.
Q. You saw him, did you?
A. Yes, sir.
Q. He is the man that is here now as a witness?
A. Yes, sir; the same man.
Q. What was he doing?
A. He was sitting around there.
Q. Was he playing?
A. I don't think he was; no, sir; not in the afternoon.
Q. Did you know John Barber?
A. Yes, sir; I knew him when I seen him; I had saw him a few times.
Q. You think he was one of the parties that was there?
A. Yes, sir; I think so.
Q. And Kep Queen?
A. I think that is his name.
Q. Did you know him?
A. Well, I had saw him a few times.
Q. Where had you seen him before that?
A. I had seen him on the ranch between Mingo and Tulsa.
Q. Had you heard of the robbery before you saw these men together?

A. Yes, sir.
Q. What did you do after seeing them there?
A. I just went off to camp; went right to camp from the log cabin.
Q. Do you know whether anybody reported them to the marshals?
A. No, sir; I don't know that they did.
208 Q. You don't know anything about that?
A. No, sir.
Q. I will ask you if you wasn't there in the forenoon?
A. Yes, sir.
Q. Was the defendant there at that time?
A. No, sir.
Q. He wasn't there, then?
A. No, sir; he wasn't there in the forenoon that I saw.
Q. How long did you remain there in the afternoon?
A. I staid, I think, from a half to three-quarters of an hour; probably three quarters of an hour I was there.
Q. They were playing during that time?
A. Yes, sir.
Q. Did you have a talk with any of them?
A. I talked with Mr. Lewis a few minutes.
Q. What did you talk to him about?
A. About some cattle.
Q. What was your business there?
A. I went to see him in regard to buying same cattle that he had that I understood was for sale, and I stopped there to see him about it.
Q. How did you know he was there?
A. Well, I had heard that he was there about one o'clock; after dinner.
Q. Who told you about it—who did you hear it from?
A. Well, a man living down north on the prairie, I forget his name—north of the section house—I think it was one of the Harlows told me.
Q. What took you there in the forenoon—what was your business then?
A. I was going from the headquarters of the cow ranch, going to camp; it is right on the road, a little to the right.
Q. On the road, and you stopped?
(Here court takes a recess for ten minutes and jury retires.) (Jury returns and testimony proceeds.)
Q. Now, when you saw those men together there at Dawson's house, it was the Monday after the Friday of the robbery, I believe you said?
209 A. Yes, sir.
Q. You were there twice?
A. Yes, sir.
Q. What time in the forenoon were you there?
A. I was there between seven and eight o'clock in the morning.
Q. At that time the defendant wasn't there?
A. No, sir.
Q. How long did you remain at that time?
A. I stayed about 15 minutes, I think.
Q. What were they doing then?
A. The boys were playing cards.
Q. Did you see their horses?
A. Yes, sir.

Q. *Did you see their horses?*
A. *Yes, sir.*
Q. Where?
A. Tied up at the cabin.
Q. At the cabin?
A. Tied to the trees at the cabin.
Q. What kind of a place was it in and around the cabin?
A. There was some scattering trees.
Q. How far back to the trees?
A. About 50 yards.
Q. Was there a bluff there?
A. Not much; no, sir; just a gradual slope.
Q. Slope back to what?
A. Back to Mingo Creek.
Q. It was woodland there?
A. Yes, sir.
Q. Heavy woodland?
A. No, sir; not very heavy; small timber.
Q. How was it about the underbrush?
A. Some underbrush and tall trees.
Q. When were you next at that cabin?
A. In the afternoon, about two or three o'clock.
Q. Well, after that, were you there the next day again?
A. That was on Monday; yes, sir; Tuesday morning.
Q. Did you see any of them there then?
A. No, sir.
Q. Tuesday morning you were then, and they were not there?
A. Yes, sir.
Q. That is, at the cabin?
A. No, sir; they were not there.
Q. Did you ever see them again?
A. No, sir; I don't think I did.
210 Q. Do you remember what kind of horses those were that you saw?
A. Well, I remember one in particular was all, I think.
Q. What was that?
A. It was a paint—what we called a paint.
Q. Paint horse?
A. Mare, I think.
Q. Please state if the saddles and bridles were on the horses when they were hitched there.
A. Yes, sir; in the morning they were.
Q. How about in the afternoon?
A. I don't think they were in the afternoon.
Q. None of them in the afternoon?
A. I believe there was one.
Q. What kind of a one was that?
A. Well, I believe it was a sorrel that was tied up there with the saddle on.
Q. Do you know whose horse that was?
A. No, sir; I don't know that I do.

Q. Did you know any of the horses that were there in the morning?
A. I don't know any at all; no, sir. I can't remember any of them; only that one.
Q. The paint horse?
A. Yes, sir.
Q. Did you have a talk with any of them while you were there?
A. Well, I think we had a few minutes talk in the forenoon.
Q. Who was you talking to?
A. I merely talked to all of them. I was talking about Mr. Lewis. I asked where Mr. Lewis was, and they said he wasn't there.
Q. Did you have any talk in the afternoon when Lewis was present?
A. Nothing, only about the cattle.
Q. Did you have any talk with Queen?
A. None at all.
Q. Did you get any information in the forenoon as to where Lewis was?
A. Yes, sir; they told me he was at home.
Q. In the forenoon?
A. Yes, sir.
Mr. BARNES. I don't think, your honor, this testimony is competent.
Mr. CLAYTON. Well, perhaps not. I will withdraw it, if your
211 honor please, if there is any question about it, as to what was said there in the forenoon; I do not care anything about it, particularly.
Cross-examination waived.
(Witness excused.)
Cross-examination waived.
(Witness excused.)

212 CHOLA GUNTER, being called and examined, testified as follows:

The DISTRICT ATTORNEY. What is your name?
A. John Gunter is my name, but you fellows have got it Chola.
Q. Where did you live in June, 1888?
A. Well, I didn't live anywhere hardly; I was working——
Q. Dead, were you?
A. I was working.
Q. What doing?
A. I was driving cattle.
Q. Cow boy?
A. Yes, sir.
Q. Do you remember of hearing of the robbery and murder at Verdigris in June, 1888?
A. Yes, sir.
Q. I will ask you when you learned of it first?
A. The first I heard of it—I don't remember the day of the month, but I remember the day of the week.
Q. When was it?
A. On Monday.
Q. Please state if you was at Dawson's house on the forenoon of that day?
A. I was here. I just rode up there and stopped.
Q. Anybody there?
A. Yes, sir; there was five men there.

Q. What were they doing—first, what time of day did you get there?
A. It was early in the morning, just a little bit after sunrise; I don't recollect just exactly what time it was.
Q. Was the defendant there at that time?
A. If he was I didn't see him.
Q. Didn't see Lewis?
A. No, sir.
Q. Did you see him at all that day?
A. No, sir.
Q. Now, then, who did you see there?
A. Well, I seen only two men that I knew.
Q. Who were they?
A. One of them was Kep Queen, that was the name he was known by in that country, and the other one was Bill Dawson.
213 Q. Kep Queen and William Dawson?
A. Yes, sir.
Q. It was at Dawson's house, wasn't it?
A. Yes, sir.
Q. You didn't know the other three men?
A. No, sir.
Q. There were five altogether?
A. Yes, sir; five is all I saw.
Q. There were four men besides Dawson?
A. Yes, sir.
Q. Where were the horses, if they had any?
A. They were kind of southeast of the house.
Q. How were they—loose?
A. No, sir.
Q. They were tied?
A. I guess they was. They was about 50 or 75 yards from the house.
Q. Saddles on?
A. Yes, sir.
Q. Did you notice any of the horses?
A. I never paid any attention to them, only one, which was the big spotted horse.
Q. Spotted?
A. Yes, sir.
Q. What you call a paint horse in that country?
A. Yes, sir.
Q. Never noticed any of the rest of them?
A. No, sir; I never thought anything about it, and I never paid any attention to it.
Q. You say you was not there again that day?
A. No, sir.
Q. Were you there the next day?
A. No, sir.
Q. Did you ever see these men again any more?
A. No, sir.
Q. Where did you go after you saw these men?
A. Well, I went on about a mile, and came back to the camp, and then I went on to Catoosa, and there I heard about the robbery.

Q. What did you go to Catoosa for?
A. That was the end of my line.
Q. Did you see any of the marshals at Catoosa?
A. I saw them that night.
Q. Where were they?
A. They were at Catoosa.
Q. What was going on?
A. There was a dance there, is how come me there.
Q. Who were the marshals?

A. Heck Thomas, Jo Cordell, and Jim Wallace—I think there
214 was only five of them, and the other two I didn't know.

Q. Did you see Charlie Leflore?
A. No, sir.
Q. Please state if you informed them of these men being down there?
A. Yes, sir; I told them I saw them. They were describing a bunch of men, and described that paint horse, and I told them that I saw about that sort of a bunch of men there. I could not describe any of the horses only the paint horse.
Q. They described the paint horse to you?
A. Yes, sir.
Q. When you were at Dawson's were these men armed?
A. Well, I didn't see any guns. I just rode up to the door and hollered, and Bill Dawson and Kep Queen was sitting on the foot of the bed, or by the bed, I don't remember.
Q. What were they doing?
A. I could not tell you; I wasn't in the house, but then I heard they was playing cards. House and Robins told me——
Q. Never mind what they told you. It don't make any difference. You say you don't know whether there was any arms there or not?
A. I didn't see any.

Cross-examined by Mr. BARNES:

You say you wasn't close to the horses?
A. No, sir.
Q. You didn't notice particularly to see whether they were saddled or not?
A. Well, the saddles were on the horses.
Q. Did you answer that way because of the way Mr. Clayton put the question, or from the way you remembered it?
A. Because I remembered it; but I didn't pay much attention to the horses.
Q. Could you say whether they were all saddled or not?
A. Well, I think they was.
Q. How near did you pass to them?
A. Well, it was about 50 or 75 yards; something like that.
Q. Scattering timber?

A. Yes, sir; little grove.

215 Q. You didn't notice any of them particularly, only this paint mare?

A. No, I didn't notice them particularly. She was a noted animal, and I just noticed her, was all.

Q. You didn't see Mr. Lewis there at that time?
A. No, sir, I did not; if he was there I did not see him.
(Witness excused.)

216 BUD KELL, being called and examined on behalf of the Government, testified as follows, to wit:

The DISTRICT ATTORNEY. What is your name?
A. Bud T. Kell.
Q. What are you?
A. United States Indian police.
Q. Please state if in 1888 you were deputy marshal.
A. No, sir.
Q. Were you police at that time?
A. Yes, sir.
Q. Did you know the defendant, Lewis?
A. No, sir.
Q. Where were you in June, 1888, at the time of the train robbery and murder at Verdigris?
A. I was at Muscogee.
Q. What was the first information you got of the robbery?
A. When there was a man come up town and told me that there had been a train robbery and a man killed. A man by the name of Southham told me.
Q. You were told that there had been a train robbery?
A. Yes, sir.
Q. What did you do then?
A. I went down to the depot, and while there they come in there with a corpse, and after 'while I got orders from Captain Leflore——
Q. You saw a dead man at the depot at Muscogee?
A. Yes, sir.
Q. Did you learn his name?
A. Not at that time.
Q. Did you see any wounded man there at that time?
A. I never saw any wounded man.
Q. What did you do after that?
A. I was ordered by Capt. Leflore to take charge of the outfit that was sent out.
Q. Who was Charlie Leflore?
A. Captain of the Indian police.
Q. You were to take charge of a party of Indian police?
A. Some police and some deputy marshals.
Q. What did you do then?
A. Well, sir, we got out horses and put them on the train and went on over to the switch at Verdigris bridge.
Q. You put your horses on the train?
A. Yes, sir; on a stock car.
Q. And went to the place of the robbery?
A. Yes, sir.

217 Q. Now, then, Mr. Kell, you can state all that you did when you got there, looking towards the capture of the robbers, and of any investigations you made, and the result of your investigation.

A. Well, sir, it wasn't quite daylight when we got there?

Q. You got there before daylight, you say?

A. Yes, sir; we waited until daylight, and when it got light enough for us to see we went to looking around for tracks, and found a good many tracks on the west side of the track, and at a place where it looked like a man had been standing I picked up an empty cartridge hull, and about 15 steps from there I picked up another cartridge shell, .44.

Q. Both of them .44's?

A. Yes, sir.

Q. Was that in the woods or close to the track?

A. Close to the track, on the grade.

Q. How far from the tank?

A. Well, sir, one of them must have been about half way between the tank and the place where the machinery man lives, and the other one was right near the coal chute at the house.

Q. Both of them on the same side of the track?

A. Yes, sir; on the west side of the track.

Q. How far apart were they?

A. About 15 or 20 steps apart.

Q. That would be to the right side of the track going south?

A. Yes, sir.

Q. About 15 or 20 steps apart, did you say?

A. Yes, sir.

Q. .44?

A. Yes, sir.

Q. Pistol or Winchester?

A. Well, Winchester cartridges; sometimes you can use them in a Colt's pistol or a Winchester either.

Q. Is there any distinction between a Winchester hull, .44, and a Colt's revolver, .44?

A. No, sir; we call them Winchester cartridges, is all.

Q. Go on and state what you did after you found these.

A. Well, we went up about the tank and we found footmen prints there, and we followed them around until where there was a road run right through a grove or timber; it was all timber in there, but this was a
218 thick patch of timber, and there was a road run right through there, and there was tracks where some horses had been hitched.

Q. You followed these foot tracks down the road into the timber?

A. Yes, sir.

Q. And then you came to a thick place in there where some horses had been tied?

A. Yes, sir.

Q. On which side of the track?

A. West side.

Q. About how many horses, could you tell,had been tied there?

A. Well, sir, it looked to me, from the way I counted the tracks, there was about five head of horses.

Q. How far were they from the railroad?

A. About 30 or forty steps.

Q. What did you do after you found these places where these horses had been tied?

A. Well, sir, we followed the tracks at different times. Four horses led up the bottom, kindy off from the river a piece, but right up the river bottom, and one horse followed the road.

Q. Now, then, how far did you follow those four horse tracks?

A. We followed the four horses' tracks until the edge of the bottom, about three miles from there at that time.

Q. How far did you follow them all together?

A. Well, we followed them all about 14 miles.

Q. In what direction?

A. Kind of a northwest direction. Sometimes they traveled due west and sometimes northwest.

Q. Do you know where the defendant lives?

A. No, sir; I don't know exactly where he lives; I know the neighborhood.

Q. In what direction did these tracks lead with reference to that neighborhood?

A. Yes, sir; they went in the direction of that neighborhood.

Q. You followed these four-horse tracks about 14 miles?

A. Yes, sir.

Q. How about the one-horse track?

A. Well, the one-horse track, I followed it a piece; it left the road after it went up about a mile and a half or two miles, and then went through a field, and then come out of the field, and went through an old col-
219 ored woman's yard, no fence around it, and then went on and come into the road again.

Q. How far did you say it was before it left the road?

A. About a mile and a half.

Q. How far did it go before it came into the road again?

A. About half a mile; may be a little further.

Q. Is that all the further you followed it?

A. It went into the road, and I went back then to see about the rest of the tracks, and we went on to the trail of the four horses and followed them up, and the other four horses come right back into the road where the one-horse track I was following.

Q. The four horses went up the river bottom on no road?

A. Yes, sir.

Q. And then they came into the road where the other one-horse track had come into the road going the other way, about two or three miles—how far from the bridge?

A. About three or four miles.

Q. Then how?

A. Well, the one-horse track took a left-hand road about seven or eight miles up the country there, and these four horses kept the other road.

Q. Where was it the one-horse took the left-hand road?

A. Where the one that goes in the direction of Tulsa.

Q. How far from the bridge did that one horse track take this road?

A. About seven miles.

Q. The left-hand road?

A. Yes, sir.

Q. The others kept on the road, did they?

A. Yes, sir.

Q. Well, now then, go ahead. Did you notice where the one-horse track went after that?

A. No, sir; I didn't follow it any more. We kept on up the road, and we saw some horses grazing down there on the Verdigris River, and we thought they might be the horses we were after, and we charged the camp, and found it was a lot of campers' horses grazing out there with their saddles on. We left them, and turned back to the house in the edge of the timber and prairie, and there Captain Leflore come to us.

220 Q. How far was that from the bridge?

A. It must have been in the neghborhood of 18 or 20 miles.

Q. Did you see whether the one-horse track got with the others any more?

A. It left there, and as far as we could track them why there wasn't but the four horses' tracks.

Q. What is the reason you couldn't track them any further than the 14 miles?

A. Well, sir, they had scattered there. After we got dinner, though, we saw one or two horses' tracks along there that resembled the same tracks.

Q. You saw no more of the one-horse track after you got seven miles off from the bridge, when it left on the left-hand road? You didn't follow that any further?

A. No, sir.

Q. Now, then, could you tell much about the track which had the appearance of going first, the one-horse or the four-horse tracks?

A. Well, I could not tell much about that, I don't suppose.

Q. Now, then, Mr. Kell, was there any peculiarity about any of the tracks of the horses?

A. Well, these horses all seemed to be shod and the corks of the shoes was made kind of square, but at the toes they was drawed in a wedge shape.

Q. Was there any one of the tracks that you noticed?

A. Well, sir, after that I was at Heck Thomas's camp, and I was showed a horse that was said to have been got from a man by the name of Lewis, and I took him out and had him make a track, and the track that this horse made corresponded with one of the tracks of the horses we were trailing.

Q. Which foot made this peculiar track?

A. It was on the inside cork of the right front foot.

Q. Did it correspond with the track of the single horse or one of the four?

A. No, sir; it was a larger track than the single-horse track.

Q. It was one of the four, then?

A. Yes, sir.

Q. This peculiarity was on the inside cork of the right front foot?

A. Yes, sir.

221 Q. You led the horse out and had him make a track, and the peculiarity about the track of the horse at the camp was the same as you noticed in one of the tracks of the four horses you were following?

A. Yes, sir.

Q. What peculiarity did you observe?

A. The corks were sharp, and the inside cork of the right front foot was split, and wherever the horse put that foot down it would leave a raised place in the ground where the split place in the cork was; when it went into the ground it would leave a little ridge.

Q. You observed that before you saw the horse, did you?

A. Yes, sir.

Q. What was the nature of the ground in both instances?

A. The ground in the bottom where the horses had been was soft and the other was sandy ground. The reason I could keep the trail in places where the land didn't have much of a print was because nothing else had crossed it or got into the trail, and we watched close.

Q. What day was this you were doing this trailing?

A. This was on Saturday.

Cross-examination by Mr. BARNES:

Q. All horse tracks?

A. Yes, sir.

Q. No mule tracks?

A. No, sir.

Q. Certain?

A. I can tell a mule track from a horse track.

Q. I suppose so. Did you notice there *there* had been a good many horses hitched around near this water tank, around about the bridge?

A. I noticed where there had been a good many horses there in that grove.

Q. You found other tracks besides the tracks of the horses that you were trailing?

A. We did on the north side of the river.

Q. This was on the south side?

A. No, sir; I never saw any other tracks.

Q. Which side of the river did you start from?

A. South side.

Q. You saw no other tracks about the bridge except the tracks
222 that you took?

A. There were a good many old tracks.

Q. After you left the railroad track how far did you follow the road before you went towards this grove where you say the horses had been hitched?

A. It is about 40 or 50 steps from the railroad.

Q. Are you familiar with the country there?

A. To a certain extent, I am.

Q. That country wasn't fenced then as much as it is now?

A. No, sir; there is fencing going on all of the time.

Q. Do you know where Marshal's fence is now?

A. Yes, sir.

Q. How far does it go from this railroad bridge?

A. It goes right along in about 20 steps of the bridge.

Q. You followed these tracks west part of the time and northwest part of the time?

A. Yes, sir.

Q. Now, that pasture extends west from the bridge?

A. Yes, sir.
Q. How many miles?
A. I have not been to the west side of the pasture since that has been built, since that time, but from what I can learn it is about 18 or 20 miles. All I know is from what I heard the people say.
The DISTRICT ATTORNEY. That has been put there since?
A. Yes, sir.
Mr. BARNES. It wasn't there at the time?
A. No, sir.
Q. I just want to know of you how far that pasture extends from the bridge. You don't know, but you say you understand it extends 18 or 20 miles?
A. Yes, sir.
Q. How near does it go down to the bridge?
A. Well, I don't know as it goes in a mile of the bridge, as far as I know.
Q. Mile or two of the bridge?
A. Yes, sir.
Q. Does it extend from one river to the other?
A. Only what I know about the pasture is what I have saw of the fences along the railroad.
Q. You haven't traveled around in there except what you noticed from the railroad.
A. No, sir.
Q. When was that pasture put there?
223 A. I don't know, sir, when it was put there.
The DISTRICT ATTORNEY. It was put there since this killing?
A. Yes, sir.
Q. Since you went along there?
A. Yes, sir.
Mr. BARNES. Was that paint mare and this horse that you speak of about the same size?
A. I never did see the paint mare.
Q. Never saw her?
A. No, sir.
Q. You never saw any of the horses that you have spoken of, except this horse at the camp?
A. No, sir.
Q. You don't know anything about the size of the other animals?
A. No, sir.
Q. Did some people call that horse that you saw at the camp a blue horse?
A. Well, some people might call it a blue gray and some might call it an iron gray.
Q. Some might call it a blue gray?
A. Yes, sir.
Q. You do not know of your own knowledge who was the owner of that horse at that time?
A. No, sir; I do not.
Q. That is, I mean, at the time of the robbery?
A. No, sir.

Q. All you know about it is that you saw that horse after that time in Heck Thomas's possession?

A. Yes, sir.

Q. Where was that camp—Catoosa or Tulsa?

A. No, sir; it was near the section house; I believe they call it Mingo Switch.

Q. Do you know how close that switch is to where Will Dawson lived at that time?

A. Well, I have beeb there from the switch to that house that they said was Will Dawson's, and I guess it is a mile or a mile and a half or two miles.

Q. Is it that far?

A. I could not say the exact distance, because when I traveled in that country I wasn't all the time going on a straight line.

Q. You never made any particular observations?

A. No, sir.

224 Q. It might be a mile, or it might be a mile and a half, or it might be two miles?

A. Yes, sir.

Q. That is called Mingo Switch, is it?

A. That is what I understand; I am not certain about the name, only I believe it is a switch. It is at the section house.

Q. Well, now then, you say you followed these tracks, and that one track came into the others about three miles from the bridge, and then about four miles from there it took the left-hand road?

A. Yes, sir; it took the left-hand road about seven miles from the bridge.

Q. Well, you were following the tracks when you charged that log camp, wasn't you?

A. The tracks scattered just before we got to that log camp.

Q. You had some idea that those tracks were the tracks of the horses you charged?

A. No, sir; they had scattered, but we saw them horses across there with their saddles on, but we supposed myabe the parties had come together there to examine the property they had got, if they got any, and we charged them, but we had no knowledge that the bunch of horses that we charged were the horses that we was following.

Q. No, no; but you charged them all the same?

A. Yes, sir.

The DISTRICT ATTORNEY. When you charged those men, how did you satisfy yourselves they were not the men?

A. Well, there was men there with logs on their wagons, and women in the camp, and there was fires there looked like that they had been there several days.

Q. Did you examine the tracks?

A. No, sir.

Q. Did you make any inquiries along the road if anybody had seen any of these parties?

A. Well, sir, we met an old lady early in the day that seen this paint horse. She said she heard a noise and went to the door and seen a man riding on a paint mare through the yard.

Q. The one-horse track was the paint mare?

Mr. BARNES. I don't think that is competent.

The COURT. I think it is.

225 The DISTRICT ATTORNEY. You inquired of this woman and you got information from her that a man went through her yard riding a paint horse?

A. Yes, sir.

Q. How many different persons did you find that had met these partie'?

A. I found one man that met him after he left the forks of the road, and turned to the left. He described a man riding a paint mare.

Q. Did this woman say what time the man on the paint horse passed through her yard?

A. Well, she said she had just gone to bed, and she said she didn't have any clock, but it must have been about 12 or 1 o'clock in the night.

Q. Now, then, you say that you met a man who had seen a man riding a paint horse, after the track had left the road, going to the left?

A. Yes, sir.

Q. Who was that man?

A. A man by the name of Hogan. I don't know his given name.

Q. Do you know where Hogan is now?

A. No, sir; he is said to be—lives up the Arkansas somewhere.

Q. He informed you that he had seen a single man riding a paint horse?

A. Yes, sir.

Q. I don't mean a man who is not married, but a man riding by himself?

A. Yes, sir; that is the way I understood it.

Mr. BARNES. How far did you say that woman lived from the bridge?

A. Well, from where I went around it must have been a mile and a half or two miles.

Q. She said she didn't know what time of night it was, but that she had just gone to bed?

A. Yes, sir.

Q. No yard around the fence?

A. No, sir.

The DISTRICT ATTORNEY. No fence around the yard?

Mr. BARNES. Yes; I mean no fence around the yard.

Q. Did she claim she got up?

A. Yes, sir; she said she got up to see what the dogs were barking at.

Q. She had no timepiece?

226 A. She said she had no timepiece, but had just gone to bed.

Q. What is that man Hogan's name?

A. I don't know his first name.

(Witness excused.)

227 JO CORDELL, sworn and examined on behalf of Government, and testified as follows, to wit:

The DISTRICT ATTORNEY. What is your name?

A. Jo Cordell.

Q. Are you a deputy marshal?

A. Yes, sir.

Q. Please state if you were a deputy marshal or engaged in the marshal's affairs in 1888?

A. Yes, sir.
Q. Were you a deputy or posse?
A. I was posse.
Q. Whose posse?
A. Heck Thomas's.
Q. Heck Thomas was a deputy, was he?
A. Yes, sir.
Q. Do you know the defendant Lewis?
A. Yes, sir.
Q. Please state if you were along when he was arrested?
A. Yes, sir.
Q. Where did you find him and when?
A. It was sometime between the middle and last of June, on Coal Creek.
Q. How far from his house?
A. Why, a short distance. You could hear them talking from there.
Q. Was he horseback or on foot?
A. He was horseback.
Q. What was he riding?
A. He was riding an iron gray horse.
Q. How was the horse branded?
A. Branded on the shoulder with J2, with a bar through it, and on the hip he was branded 171.
Q. Do you know wha' that 171 brand is?
A. I have seen Mr. Lewis's stock with that brand.
Q. Do you know who the J2 brand is?
A. Yes, sir.
Q. Whose is it?
A. It belongs to a man by the name of Mills.
Q. Has it a bar through it?
A. No, sir.
Q. But the one you saw on this horse did have a bar through the J2?
A. Yes, sir.
Q. Could you tell from the brand whether the bar was put on at the time the J2 was?
A. No, sir; I could not tell about that.
Q. What direction was he going when you arrested him?
228 A. He was coming on a trail that led to his house.
Q. What time of day?
A. It was rather late in the evening.
Q. About what time?
A. I suppose about four or five o'clock.
Q. You arrested him?
A. Yes, sir.
Q. What became of the horse?
A. I rode the horse for sometime, and he was afterwards turned over to Mr. Mills.
Q. The man whose brand is J2?
A. Yes, sir.
Q. Were you there when Mr. Mills proved the horse?
A. At the camp; yes, sir.
Q. You were present when he proved it?

A. Yes, sir.

Q. Do you know anything about another horse that was being used by a man by the name of Hasty, a laborer on defendant's place?

A. Yes, sir; there was a brown horse.

Q. What about that?

A. Why, Captain Leflore went and got him.

Q. Was you along?

A. Yes, sir—well, we could see him from where we were. He left us and went and got him where he was plowing on the prairie.

Q. From whom?

A. From a man that was working for Mr. Lewis.

Q. How was that brown horse branded?

A. He had the 171 on him, and I don't remember about the other brand.

Q. Do you know what became of him?

A. He was turned over at the same time.

Q. To whom?

A. To Mr. Mills.

Q. How far did Mr. Mills live from there?

A. He lives east of Choteau about ten miles.

Q. How far from the defendant?

A. I suppose forty or fifty miles, perhaps further.

Q. Mr. Mills claimed this property as his?

A. Oh, yes; yes, sir.

Q. How long had you been looking for Lewis before you arrested him?

A. Well, we heard of the robbery two or three days, perhaps longer than that, and we came up to Tulsa, and from Tulsa we went to
229 Catoosa, and went to a dance that night, and heard of a gang being down on Mingo.

Q. That is at Catoosa?

A. We heard that at Catoosa; yes, sir.

Q. Do you remember who you heard that from?

A. Yes, sir.

Q. Who?

A. Chola Gunter and Jim House.

Q. What did you do then?

A. We started a while before daylight, and got down on Mingo just a little after daylight.

Q. That is, Dawson's house?

A. Yes, sir.

Q. A little after daylight the next day after you heard these parties were down there?

A. Yes, sir.

Q. Did you find them?

A. No, sir.

Q. Where did you go?

A. We searched nearly all day before we found them.

Q. Did you go to the defendant's house?

A. We did afterwards.

Q. What time did you go there?

A. We never went over to the house, but we had a man to make inquiries.

Q. Was the defendant at home?
A. No, sir; he wasn't home.
Q. How long that day did you search for them?
A. Do you mean on Tuesday?
Q. Yes, sir.
A. We searched until way in the evening.
Q. Did you arrest him that evening?
A. No, sir.
Q. When did you arrest him?
A. The following evening.
Q. Do you know whether he come to his home that night?
A. No, sir; he didn't come to his home. We caught him after that night.
Q. Well, now, on Monday night at a dance at Catoosa you heard of this thing?
A. Yes, sir; and it was on Wednesday evening we caught him.
Q. On Tuesday morning you got to Mingo?
A. Yes, sir.
Q. When you got there there was nobody to be found?
A. No, sir.
Mr. BARNES. I suppose you mean about that Dawson place, do you?
A. Yes, sir.
230 Mr. CLAYTON. You searched that day and the next day, did you?
A. Yes, sir.
Q. During that day the defendant wasn't at home, you say?
A. No, sir.
Q. On Wednesday about four or five o'clock you ran across the defendant coming up a trail that led to his home?
A. Yes, sir.
Q. Riding this gray horse?
A. Yes, sir.
Q. From what direction was he coming?
A. He was coming up the creek.
Q. Well, what direction was that?
A. Well, I would not say; I think the creek runs west, if I am not mistaken.
Q. And there you arrested him?
A. Yes, sir.
Q. Did you find any of the other parties?
A. No, sir; we watched all night on the trail for them to come in, but they didn't come.
Q. You watched all night; did you surround the house?
A. No, sir.
Q. Where did you watch?
A. We watched in the bottom that they would have to come through to get to the house; the same trail they went out on.
Q. You had learned of them going out, had you?
A. Yes, sir.
Q. You had made inquiries, and learned of them going out?
A. Yes, sir.

Q. How many?
A. I think there were five.
Q. Did the defendant come back on the same trail that you learned the five had gone out on?
A. Yes, sir.
Q. What direction was Tulsa from there?
A. Tulsa is right out on the Frisco road, right below there.
Q. In going to Tulsa would you go this trail?
A. No; this was just a one-horse trail; it wasn't a wagon trail.
Q. Do you know where that trail led to?
A. No, I don't.
Q. How far is Lewis's from Tulsa, to your opinion?
A. About five miles, I think.
Q. Was it before or after you made this arrest that you took the horse from the laboring man that worked around there at Lesis's?
A. It was after, I believe.

231 Cross-examination by Mr. BARNES:

Q. Do you know where Jane Rogers lives there?
A. Yes, sir.
Q. Did Mr. Lewis tell you that he had been to see Jane Rogers about buying her place, and did you track that up afterwards—you and the others with you—and find out that was a fact?
A. I don't remember about that.
Q. Who was with you?
A. When?
Q. Why, at the time you arrested Mr. Lewis?
A. Heck Thomas.
Q. Was Burril Cox riding with Heck Thomas at that time?
A. I don't think he was; that is, that day.
Q. Which way does Mingo Creek run there with reference to the points of the compass?
A. I don't know which way it does run.
Q. You say he was coming on a certain trail, you believe from the west?
A. I say I think the creek runs on a west course.
Q. You said he was coming up the creek?
A. Yes, sir.
Q. You think the creek runs west?
A. Yes, sir.
Q. Then he would be coming towards the east?
A. Yes, sir.
Q. That is, if you are right; I understand you—you are not certain about, but if you are right about the direction of the creek, Lewis was coming from the west to the east?
A. Yes, sir.
Q. Do you know how the public road runs there?
A. Yes, sir.
Q. Which way does it run?
A. It runs right down the railroad.
Q. Does it run east, or west, or north, or south, or some other direction?

A. I was changed around out in that country, and I don't know which way it runs.

Q. Do you know that there is a bend in the road there where you arrested Mr. Lewis, and that you arrested him just across a little bend in the road?

A. Yes, sir.

Q. And if you did arrest him on a trail, you don't want the jury to understand that there was no public road anyways near?

A. It was just a cut-off.

Q. It was a cut-off that he saved a little distance by leaving the main road and cutting across there?

A. Yes, sir.

232 Q. Now, you know this Dawson house, where these men were said to have been?

A. Yes, sir.

Q. You were searching around there for not any particular man, but for a crowd of men that you understood were found there at that house?

A. Yes, sir; we was searching for the house first, and could not find it for a while.

Q. Did you go to Mr. Lewis's house that day?

A. No, sir.

Q. You didn't go to his house at all until after he was arrested?

A. No, sir.

Q. Now, you got this news Monday night, and you started out Tuesday morning, I believe?

A. Yes, sir.

Q. Do you know the direction old man Barber was said to have lived from there?

A. I have been to his place; yes, sir.

Q. Isn't this Dawson place about two miles near to where Barber lived than the Lewis place is?

A. I don't think there is much difference between the two. I don't know, though, for I never went to the Barber neighborhood direct from the Lewis neighborhood.

Q. Which way is Tulsa from Mr. Lewis's?

A. I don't know; it is southwest, I think.

Q. Isn't it a fact that Tulsa is west of Lewis's, and Dawson's east?

A. I won't say; I won't say nothing about directions, because I was turned around.

Q. I want you to think about it, and see if it wasn't Tuesday evening instead of Wednesday evening that you arrested Mr. Lewis.

A. No, sir; Monday night we was up all night, and we were hunting for this house Tuesday.

Q. You are certain that it was Wednesdayyou made the arrest?

A. If the dance was on Monday night, it was Wednesday we made the arrest.

Q. Then that would be the 20th, I suppose?

A. I don't know; sometime between the first and last of June.

233 Q. If the dance at Catoosa was Monday night, you made th arrest of Mr. Lewis four or five o'clock on Wednesday, and no Tuesday?

A. Yes, sir.
Q. Mr. Thomas was with you?
A. Yes, sir.
Q. You don't know where Cox was?
A. No, sir.
Q. If Mr. Lewis told you where he was you say you don't remember about it?
A. No, sir.

Redirect examination by the DISTRICT ATTORNEY:

How far from the defendant's place did Jane Rogers live?
She lives quite a piece; I think it is up above Catoosa.
Q. In what direction?
A. I could not say.
Q. Up or down the railroad, or across it?
A. Up the railroad.
Q. In the direction of Catoosa, you say?
A. Yes, sir.
Q. That is where you came from—Catoosa?
A. Yes, sir; we had went up from Tulsa, and rode across to Mingo on Monday, and then we come right back.
Q. What direction does the railroad run there; do you know?
A. No, sir; it is the road that runs from Vinita.
Q. Doesn't it run east and west?
A. I don't know.
Q. If it runs east and west, then it was to the east that she lives?
A. Yes, sir.
Q. That is the Frisco road and not the M. K. & T.?
A. Yes, sir.
Q. The M. K. & T. runs north and south?
A. Yes, sir.
Q. What direction does the Frisco run?
A. At Vinita it crossed it.
Q. Don't you know that the Frisco runs right out from Vinita towards the setting sun?
A. Yes, sir.
Q. Of course it might turn right in there?
A. Yes, sir, and there is a scope of country that I am turned around in.
Q. Catoosa is on the railroad?
A. Yes, sir.
Q. How far does the defendant live from the railroad?
A. I suppose a couple of miles.
234 Q. What is the nearest town to him?
A. Tulsa.
Q. You think he lives about five miles from Tulsa?
A. Yes, sir.
Q. What is the terminus of the road; isn't there a town at the terminus about ten miles from Tulsa?
A. There is no town in Tulsa; nothing but a blacksmith shop. The road runs on from there.

Mr. BARNES. If Jane Rogers lived in an east direction, Barber's would be in a northern direction?

A. Yes, sir.

Mr. CLAYTON. I will ask you if Barber's ain't fifty or sixty miles from there?

A. Yes, sir.

Q. Way up towards Coffeyville?

A. Yes, sir.

(Witness excused.)

235 CHARLIE LEFLORE, being called on part of Government, testified as follows, to wit:

The DISTRICT ATTORNEY. Mr. Deflore, you belong to the Indian police, do you not?

A. Yes, sir.

Q. Are you captain of the Indian police?

A. Yes, sir.

Q. Were you captain of the Indian police in 1888?

A. Yes, sir.

Q. How long have you been on the force?

A. Since 1887.

Q. Were you a deputy marshal also, at that time?

A. Yes, sir.

Q. Captain of the Indian police and deputy marshal?

A. Yes, sir

Q. For this court?

A. Yes, sir.

Q. Now, Mr. Leflore, do you know the defendant?

A. Yes, sir.

Q. Do you remember the circumstance of a train robbery, and a man being killed at Verdigris in 1888?

A. I was working for the railroad company at the time as assistant special agent, and I received a telegram to go to Verdigris; that there had been a train robbery, and I went there.

Q. You were working for the railroad company, but at the same time you were captain of the Indian police, and deputy marshal?

A. Yes, sir.

Q. You went up there?

A. Yes, sir.

Q. Do you know Bud Kell?

A. Yes, sir.

Q. Did he belong to the Indian police?

A. Yes, sir.

Q. Did he take any part in the investigation of this matter?

A. Yes, sir; he was already at the place of the occurrence when I got there. They had been looking around, and when I got there, they showed me where the horses had been tied, that they supposed belonged to the men that robbed the train. I told them to go on and trail them, and I would go back to Muscogee and get some more men, and follow them up and overtake them, and I did so.

Q. Did you run across Kell?

A. Yes, sir.

Q. Where.

236 A. Up near Vanns Ford, on the river. After I went to Muscogee and got some more men with me, we went and crossed the Arkansas River above Muscogee, and we went to a place called Vanns Ford, on the Verdigris River, and there I met with Kell and others.

Q. Did you know a man by the name of Queen?

A. I only heard of such a man; I didn't know such a man at that time.

Q. Did you run across him later?

A. Well, I saw the body of a man, that was said to be Queen, at Vinita.

Q. Who took him to Vinita?

A. I got a telegram from our lieutenant, Tom Knight, saying that one of our men had killed a man, and I went there, and they had the body of a man, said to be Queen, at Vinita.

Q. What did you do with the body?

A. We kept it there in the depot freight house.

Q. Please state if you had any of the railroad men, who were at the robbery, view the body?

A. I had the express agent, Bert Codding—I took him in the depot and showed him the body.

Q. That was at Vinita?

A. Yes, sir.

Q. Now, I took you off the track a litte while just to prove that thing, because it happened to come to my mind.

Now, then, you say you went to the place where it was pointed out to you that the train robbers had tied their horses. Where was that?

It was near the Verdigris tank, at the west side of the railroad, out in the brush a little ways.

Q. What did you observe there?

A. Well, there was a place like where some horses had been tied there in some trees right there, close to the railroad.

Q. Did you follow them from there?

A. No, sir; I told Bud Kell and the parties that were there to follow them. I don't know anything about the tracks.

Q. When you met Kell, was he still on the tracks?

A. No, sir; he had lost the tracks near Vanns Ford, up there.

Q. You didn't see the tracks at all?

237 A. Well, we come to a place in the road near the mission up there, and they showed me some tracks that they said was the same tracks.

Q. How many of them?

A. Well, I didn't count them; we just rode along; there were several horses' tracks in the road and some one said, "These tracks correspond with those we have been tracking."

Q. How far was that from the bridge where the robbery occurred?

A. I suppose it was ten or twelve miles.

Q. Now, do you know anything about a horse that was taken from Hasty?

A. Yes, sir.

Q. What about that?

A. Well, a few days after I went up to Tulsa—I heard that there had been some parties seen up there that were supposed to be the parties that robbed the train—and I went up there, and Heck Thomas——

Mr. BARNES. I don't understand that he can tell what he heard.

Mr. CLAYTON. You learned that there were some men up there, and you went up there?

A. Yes, sir. Well, when I got there Heck Thomas had Mr. Lewis there in camp.

Q. Had him arrested?

A. Had him arrested. And there was an iron gray horse there that they said Mr. Lewis was riding, and that horse suited the description of Mr. Mills' horse that was lost at Choteau. He had lost two and we inquired about the other one, and we inquired—I think we asked Mr. Lewis—I don't remember exactly, but anyhow we learned that the other horse was up at Mr. Lewis's house, and I went up there and found the horse; Mr. Hasty had the horse plowing him; said he was breaking land for Mr. Lewis. He was plowing him and I taken him out of the plow.

Q. What kind of a horse was that?

A. It was a brown horse.

Q. How was he branded, do you remember?

A. He was branded with a J2, and a bar run through the J2, and 171.

Q. Where wss the 171?

A. On his hip.

Q. Where was the J2 with the bar?

238 A. Well, as well as I remember, it was on the lower part of the hip.

Q. J2 and the 171 over the J2?

A. Yes, sir.

Q. What became of that brown horse?

A. I taken him down to Heck Thomas's camp and told Heck to take that horse and deliver the two horses to Mr. Mills, and that there was a reward offered for the horses and to get the reward and we would divide it.

Q. Had you seen the reward that was offered?

A. Yes, sir; it was advertised in a card.

Q. You had seen the card?

A. Yes, sir.

Q. How far did Mr. Mills live from there?

A. Well, at Choteau, on the M. K. & T., was the address on the card.

Q. What was the reward offered?

A. $50.00, if I remember right.

Q. Did you ever get your share of the reward?

A. Yes, sir.

Q. When you saw Queen down there at Vinita was there any of his relatives there?

A. His wife was there.

Q. What name did she go by?

A. Mrs. Queen.

Q. What was she doing there?

A. She was trying to get the body and take it and have it buried.

Q. Did you let her have it?

A. Well, she asked me to help her to get it, and I told her they would hold it to have it identified, and I told her that I thought if she would make a statement that that was Queen's body that they would give it up to her, and she just pulled his sleeve up and says, "There is no use of

that for there is his initials on his arms," and there was the letters "S. D. Q.," and I asked her what they stood for, and she said "Samuel DeKalb Queen."

Q. That is how he gets the name "Kep?"

A. Yes, sir.

Q. Was that in ink?

A. Yes, sir; blue ink.

Q. That was the body that you took Mr. Codding in to see—the express agent that was on the train the night of the robbery?

A. Yes, sir.

Q. Was the body then turned over to her, or do you know?

A. I left there.

Q. You don't know; you left?

239 A. Yes, sir; they still had it there when I left.

Q. Do you know whether this defendant can talk in any other language except the English?

A. Well, while he was a prisoner at Tulsa, there in Heck Thomas' camp, he said he had been in Mexico and had learned to talk some Mexican.

Q. Of course you don't know anything about Queen, whether he could talk any other language?

A. No, sir.

Q. You had no conversation with the defendant as to whether he could?

A. No, sir.

Cross-examination by Mr. BARNES:

Q. All these men accused of being in this train robbery and murder were Texas men originally were they not?

A. Well, that was my information.

Q. A great many of those Texas people can talk Spanish, can't they?

A. I think they can; a good many of them can.

(Witness excused.)

240 W. R. MILLS, being called and examined on behalf of the Government, testified as follows, to wit:

The DISTRICT ATTORNEY. State your name.

A. William R. Mills.

Q. Where do you live?

A. I live in the Cherokee Nation, Cooweescoowee District.

Q. Do you know the defendant Lewis?

A. No, sir; I am not personally acquainted with him; I never met him but once before that I know of.

Q. Mr. Mills, do you know Heck Thomas?

A. Yes, sir.

Q. Deputy marshal, isn't he?

A. Yes, sir.

Q. Did he ever turn over to you two of your horses that had been stolen?

A. Yes, sir.

Q. State when and where; but first state what kind of horses they were.

A. One was a blue roan or iron gray and the other one was a brown, dark brown or black in the winter and a light brown in the summer.

Q. How were they branded?

A. With a J2.

Q. Is that your brand?

A. Yes, sir.

Q. Was there any bar across the J2.

A. No, sir.

Q. Where were they branded?

A. The gray was branded on the left shoulder and the brown on the left hip.

Q. When did you lose them?

A. They were stolen on the night of the 14th or 15th day of April, 1888. They were on the range, consequently I don't know whether they were taken the 14th or 15th.

Q. They were stolen either on the night of the 14th or 15th day of April, 1888?

A. Yes, sir.

Q. When were they returned to you, do you remember?

A. It was some three months after; I don't recollect the exact date, but it was just after the train robbery at Verdigris.

Q. Did Mr. Thomas turn them over to you?

A. Yes, sir; they turned them over to me at Tulsa.

Q. How was the gray branded when it was returned to you?

241 A. There was a bar over the J2 and 171 on the hip.

Q. How about the brown?

A. The brown had a bar run through the J2 and 171 on the lift hip above the J2.

Q. Did he horses have the bar through the J2 or the 171 on the hip when they were stolen?

A. No, sir.

Q. These were your horses?

A. Yes, sir; I raised the horses.

Q. What were they worth?

A. I sold them for $100.00 apiece when I got them up in good shape; they wasn't worth very much when I got them back, as they had been ridden down.

Q. You hadn't sold them to Mr. Lewis nor to any one else at the time they were taken?

A. No, sir.

Cross-examination:

Mr. BARNES. These horses were stolen on the night of the 14th or 15th of April, 1888?

A. Yes, sir.

Q. Did you state how far you lived from Mr. Lewis?

A. About 60 miles, I guess; some 60 odd miles.

Q. You didn't know Kep Queen, did you?

A. No, sir; I never knew him.

Q. These horses were missed from the ranch?

A. Yes, sir; I turned them out on the night of the 14th and never went to get them until the morning of the 16th.

Q. Where did you live at that time?
A. I lived ten miles northeast of Choteau at that time.
(Witness excused.)

242 CHARLIE LEFLORE, recalled on behalf of defendant for further cross-examination:

Mr. BARNES. When was it you saw Mr. Lewis in camp there?
A. Well, it was four or five or six days after the robbery occurred at Verdigris.
Q. You don't remember the exact date?
A. I think it was the 19th or 20th I saw him. As well as I remember, we went up to Tulsa in the evening on the train, and went to Thomas's camp that night, and he had just arrested Mr. Lewis and brought him to camp that night before we got there.
(Witness excused.)

243 BUD HEADY, called and examined on behalf of Government, testifies as follows:

The DISTRICT ATTORNEY:
Q. What is your name?
A. J. B. Heady.
Q. You are the one they call Bud Heady?
A. Yes, sir.
Q. I want you to state, if you remember, the circumstances of the train robbery upon the Verdigris River?
A. Yes, sir.
Q. Please state if you, after that time, ran across a paint horse; and, if so, where, and how long afterwards?
A. Well, I don't remember just how long, but it was about ten days, I think. I found this paint mare on the Verdigris River.
Q. Where?
A. At the Bullett Ford.
Q. Near where?
A. Near Allowee post-office.
Q. How far is that from the Verdigris bridge?
A. It is about 60 or 65 miles.
Q. How far from Coffeyville?
A. 30 miles.
Q. Do you know where old man Barber lives?
A. Yes, sir.
Q. How far from there?
A. It is 30 miles east.
Q. Was she saddled or bridled?
A. No, sir; she was tied when I got her; there was a boy tied her up that morning.
Q. Which side of the Verdigris was she on?
A. East.
Q. Which side of the Verdigris does Lewis live on?
A. West side.
Q. What did you do with the horse?
A. Turned her over to her owner.

Q. Who?
A. W. B. Brewer.
Q. You took the horse where?
A. I took her to Tulsa and found out where she belonged, and then took her to Vinita.
Q. How did you find out she belonged to Brewer?
A. Jim Crutchfield had a letter from Brewer himself.
Q. How long was this after the robbery?
A. I think I had the mare some seven or eight days, and I found her about ten days after the robbery.
244 Q. Do you know anything about some saddles and bridles and a Winchester gun and pistol, and some things being found up there, of your own knowledge?
A. No, sir.
Q. Were you shown the place?
A. I was shown the place and I was shown the horse.
Q. What horse?
A. The horse that was the mate of this paint mare.
Q. Who had that horse?
A. Grat Dalton.
Q. That was before he went out on the war path?
A. Yes, sir; he was a deputy marshal of this court at that time.
Q. Do you know what became of that horse?
A. He taken her to Vinita and left her in a livery stable for Mr. Brewer.
Q. Where did you see it?
A. I met Grat Dalton with the horse on the Virdigris River, and went to Vinita with him.
Q. How far from the place where it was pointed out to you where these things were found? I will have the man here who found the things?
A. It is about 20 miles.
Q. When you saw that paint mare, was she dry or wet?
A. She was dry; it was tied up there in the morning by a boy.

Cross-examination:

Mr. BARNES. How far did you say old man Barber lived from Coffeyville?
A. 30 miles, about.
Q. Which direction?
A. South.
Q. Which way did you live from Barber's at that time?
A. East.
Q. Did you live there near where you found this animal?
A. Yes, sir.
Q. Do you know how far it is from where Barber lived to where Lewis lived?
A. Yes, sir.
Q. How far?
A. It is about 40 miles.
Q. Isn't it 30 miles?
A. Between 30 and 40.

Q. It is not 60 miles?
A. I don't think it is.
Q. This man Brewer lived at Vinita?
A. No, sir; Olympus was his post-office, on Cow Skin Prairie, about 30 miles from Vinita. I wrote him a letter and told him to meet me at Vinita, and he did so.

245 Redirect examination:

Mr. CLAYTON. Did you notice whether or not there were any brands on those horses?
A. No, sir.
(Witness excused.)

246 W. B. BREWER, called and examined on behalf of Government, testified as follows, to wit:

Mr. CLAYTON (district attorney). State your name.
A. Wesley B. Brewer.
Q. Where do you live?
A. I live in the Delaware District, Cherokee Nation.
Q. Do you know where this defendant lives?
A. No, sir.
Q. Do you know where Tulsa is?
A. No; I can not say that I do, exactly.
Q. How far do you live from Tulsa?
A. About 60 or 70 miles, or further.
Q. Please state if you had some horses stolen from you in 1888; if so, at what time?
A. I had a bay horse and a pided mare stolen from me on the night of June 7, 1888.
Q. Would the mare be called a paint mare?
A. Yes, sir.
Q. Please state if you ever recovered them?
A. Yes, sir.
Q. Who did you get them from, and where?
A. I got the paint mare on the 10th day of July, at Vinita.
Q. From whom?
A. Mr. J. B. Heady.
Q. The paint mare that was turned over to you by Mr. Heady was yours, was it?
A. Yes, sir.
Q. The one that had been stolen on the 7th day of June.
A. Yes, sir.
Q. Who did you get the bay from?
A. Well, the man that wrote to me signed his name G. Dalton. I never saw the man, but the horse was turned over to Mr. Buffington, who runs a livery stable in Vinita, and Mr. Buffington said the man came on with some prisoners, and left the horse there for me.
Q. When did you get the bay horse?
A. On the 27th day of July.
Q. Well, how much were the horses worth?

A. Well, there was a standing bid on the paint mare from H.
247 Duskin, of South West City, Missouri, for $150.00.

Q. How much was the other horse worth?

A. Well, I refused $110.00 for him about a week before he died. C. P. Williams, of Delaware district, offered me that.

Q. He is dead now?

A. Yes, sir; died last winter.

Q. Did the horses have any brands on them?

A. No, sir. The horse's foretop was cut off, and the mare had a slit on her right hind leg.

Q. What does Dustin do?

A. He is a drug-store man at South West City, Mo.

Cross-examination:

Mr. BARNES. You say you live 60 or 70 miles from Tulsa?

A. It is somewhere thereabouts; probably not so far.

Q. That mare must have been a very fine mare?

A. Well, sir; she was a fine mare. I have got the horse to-day; and $150.00 wouldn't buy her. I guess these men that was riding her could tell you something about her.

Q. I guess one of them has been telling about her; at least he said he rode her.

(Witness excused.)

248 JAMES LITTLE, being called and examined on behalf of the Government, testified as follows, to wit:

The DISTRICT ATTORNEY. Your name is James Little?

A. Yes, sir.

Q. Where do you live?

A. I live in the Cherokee Nation.

Q. How far from the Verdigris River?

A. About 300 yards.

Q. What part of the Verdigris River?

A. I live about ten miles south of Coffeyville.

Q. Mr. Little, I want you to state if you ever found any saddles and guns, and things of that kind; if so, when and where you found them, and all about it.

A. Well, my boy found a Winchester and a saddle and a pistol. I sent my boy after horses—a little fellow, and the horses went down along the creek bottom; and it was along about the 26th or 27th of July, and the horses run in the brush, and the boy following the horses, and he come on these things, and he come and report, and I went out there and got them.

Q. On which side of the Verdigris was this?

A. On the west side.

Q. You went there, and what did you find?

A. I found a Winchester, and a pistol in the saddle pockets, and a slicker, and a couple of blankets, and a pair of spurs. The saddle pockets were fastened to the saddle. The next day there was a crowd of us went back and searched the creek, thinking there had been someone murdered there, and I think it was my father that come onto a bridle; it was a little ways from where I found the other things?

Q. Was there anything to cause you to think some one had been murdered, except finding these things?

A. No, sir.
Q. What did you do with these things?
A. I carried them to my house.
Q. I suppose you have got them yet?
A. Well, some of them I have. I have the Winchester, saddle, and slicker, and I think the two blankets, and I traded the pistol off for a plow.

Q. Do you know anything of a horse being found there?
249 A. Yes, sir; there was a bay horse found about two or three hundred yards from where these things were found, and a man by the name of Wash Guggs took him in possession, and then this Dalton came and got him.
Q. Was there any mildew or mould on these things?
A. Yes, sir; they were mildewed.
The COURT. Ask him how they were hid.
The DISTRICT ATTORNEY. Well, how were they?
A. They didn't appear to be hid; just laying down in the brush.
Q. How far were they from the river?
A. About three-quarters of a mile.
Q. Any creeks near there?
A. Yes, sir; Hickory Creek.
Q. Which side of that creek were the things found on?
A. North side.
Q. Which side was the horse found?
A. North side.
Q. Was the horse a strange horse?
A. Yes, sir.

Cross-examination by Mr. BARNES:

You think this was about the 26th of July, three years ago?
A. Yes, sir.
Q. Did the horse have any brands on him?
A. Not that I detected.
Q. Did you notice his foretop?
A. Not particularly.
Q. How large a horse was he?
A. *A.* About 15 or 16 hands high.
(Witness excused.)
Governments rests.
(Court here adjourns until to-morrow morning, Oct. 23, 1891.)

250 Thereupon the Government closed its case in chief.

The defendant, to maintain the issues upon his part, produced and examined the following-named witnesses, to wit:

William Jones, Quinne McChristian, Lewis McHenry, Lydia Cox, Carl Lewis, Buck Lewis, M. B. Baird, Andrew Hinson, T. E. Smiley, Bynum day-book entries and reference thereto, W. L. Morris, T. J. Archer, Archer's day-book entries and reference thereto, James Crutchfield, testimony of Holloman before com'r (for impeachment), Alexander Lewis, def't, & I. M. Dodge, who testified respectively as follows:

251 *Testimony offered on behalf of defendant.*

OCT. 23, 1891—8.30 a. m.

WILLIAM JONES, being called and examined on behalf of defendant, testified as follows, to wit:

Mr. BARNES. What is your name?

A. My name?

Q. Yes, sir.

McChristian is my name.

Q. Do they sometimes call you William Jones up there?

A. Yes, sir.

Q. How long have you lived up there?

A. About ten years.

Q. Your brother is up there?

A. Yes, sir.

Q. Where did you go from to that country?

A. Texas.

Q. You have been there about ten years?

A. Yes, sir.

Q. Where do you live, Mr. Jones?

A. About ten miles northeast of Tulsa.

Q. Do you know defendant, Lewis, there?

A. Yes, sir.

Q. How long have you known him?

A. Some six years. I have known him ever since he went to that country.

Q. How far did you live from him?

A. About three miles.

Q. Do you know James Hasty?

A. Yes, sir.

Q. Now, with reference to the time of the train robbery and killing near Verdigris River, near Gibson Station, do you know when that occurred, or about the time?

A. Yes, sir.

Q. I will ask you if about that time, or soon after, Mr. Hasty was hired by you to work for you?

A. Yes, sir.

Q. Where had he worked previous to that?

A. I believe up at Lewis's.

Q. At any time Mr. Lewis was under arrest, was Hasty working for you?

A. Yes, sir.

Q. Did you see Mr. Lewis while he was at Tulsa in the hands of
252 the deputy marshals?

A. No, sir.

Q. Did you see him while he was under arrest?

A. No, sir; I think not.

Q. Did you go to see him at any time?

A. Yes, sir; I went to see him once.

Q. Where was he at that time?

A. He was at Tulsa.

Q. Whose hands was he in?

A. Heck Thomas and Leflore, I believe, and others.

Q. Did you see Mr. Thomas at that time?

A. Yes, sir.

Q. You went to see Lewis and saw Thomas; how is it you didn't happen to see Lewis?

A. Well, I went to Tulsa, and there I saw Mr. Thomas, and I told him I would like to go down to the camp, and he said if I would wait a few minutes he would take me down in his buggy, and I waited about half an hour, and I was sick and I went home.

Q. That is as near as you come to seeing him?

A. Yes, sir.

A. Now, previous to that time had you had any talk with Mr. Hasty in which he made any statement as to whether Mr. Lewis was at home at the time of this robbery?

A. Yes, sir; I and Mr. Hasty talked it over.

Q. What did he say about that?

A. He told me Mr. Lewis was at home.

Q. When?

A. At the time of the robbery.

Q. Told you this previous to the time you went to the camp?

A. Yes, sir.

Q. Just tell how you came to go up there and what he said in the conversation in connection with that matter?

A. Well, I had two or three reasons in going to town. We was sick, and I went after medicine, was one.

Q. Did you carry any note from Hasty to anyone?

A. Yes, sir; I taken a note to Heck Thomas.

Q. What did you take the note for?

A. Hasty wanted me to see Mr. Lewis, and he told me to take that note to Heck Thomas to keep him from suspicioning anything.

Q. Did you deliver the note to Mr. Thomas?

A. Yes, sir.

Q. If he said anything about what he had been offered to swear
253 one way or the other, please state it.

A. Well, he told me he was going to make some money out of the thing; he told me he had been offered $250.00 by some marshals to swear that Lewis was absent at the time of the robbery, and wanted me to go down and see Mr. Lewis, and see what he would give him to swear he was at home that night.

Q. And he gave you this note so as to give you an opportunity to see Mr. Lewis?

A. Yes, sir.

Q. What was your object in consenting to deliver this message?

A. Well, Mr. Lewis was a neighbor of mine, and I thought that sort of a man was dangerous, and I would go and tell Mr. Lewis about it.

Q. You went to see him, and met Thomas at Tulsa, but was sick and could not wait, and went back home?

A. Yes, sir.

Q. You have been sick since you have been down here?

A. No, sir; not much.
Q. Have you been sworn?
A. No, sir.
(Here witness is sworn.)
Q. You are now under oath; do you say the statements you have made up to this time are true?
A. Yes, sir.
Q. Well, have you known Hasty there in that community since that time?
A. Yes, sir.
Q. Are you acquainted with his general reputation as to how the people generally regard him as to truth and veracity?
A. Yes, sir.
Q. Is that reputation good or bad?
A. It is bad.

Cross-examination by the DISTRICT ATTORNEY:

Mr. McChristian, you don't go under your right name, do you?
A. Well, sometimes I do.
Q. Your name in Texas was Jones?
A. No, sir.
Q. What was it?
A. McChristian.
Q. What part of Texas did you come from?
A. Nevara County.
Q. When did you leave Nevara County?
A. It has been about ten years ago.
254 Q. When you left Texas did you leave any charges behind you?
A. Yes, sir; there was an indictment against me.
Q. Indictment against you for stealing, wasn't it?
A. Yes, sir; I guess they would call it stealing.
Q. You left the indictment pending against you when you left Texas and went to the Indian country, and changed your name to Jones?
A. Yes, sir.
Q. Now, you were the neighbor of Mr. Lewis?
A. Yes, sir.
Q. While you were his neighbor, did you see him in possession of any stolen horses?
A. No, sir.
Q. Did you see these train robbers, Queen, Rogers, Johnson, Holloman, and those men there, riding about his house?
A. No, sir.
Q. You know Queen?
A. No, sir.
Q. Never saw any of these men?
A. Not to know them; I might have met them.
Q. Which one of your brothers had the fight with Hasty?
A. The one that is living in Fort Smith? His name is R. J.
Q. Hasty has not been a good friend to you or you to him since that time?
A. Yes, sir; Hasty worked for me a month ago.

Q. I should not think you would want such a dangerous man around you?

A. It wasn't every man that could supply his place.

Q. You regarded him as a very bad man and a dangerous man?

A. Yes, sir.

Q. He had told you that Lewis was at home at the time of the killing?

A. Yes, sir.

Q. That the marshals had offered him $250.00 to testify and he wanted you to go and see what Lewis would give?

A. Yes, sir.

Q. And you went?

A. Yes, sir.

Q. You were willing to do that?

A. No, sir.

Q. Then what did you go for when a man sent you there as an emissary or go-between for the purpose of being bribed. What did you
255 carry this letter for?

A. Mr. Lewis was a neighbor of mine, and I thought he ought to know about it.

Q. Why did you not go on your own good looks, and your own standing in the community, without taking this note to Thomas?

A. I could, if he hadn't requested me to take the letter.

Q. Did you tell Mr. Thomas about this scheme that was being gotten up to take the life of your neighbor?

A. No, sir.

Q. Maybe you thought he was one of the marshals that was hiring him?

A. I didn't know.

Q. Did you write to the district attorney or the marshal about this matter, informing them of this thing, and that there was a man being hired by the officers of this court to swear the life of your neighbor away?

A. No, sir.

Q. Why didn't you do it?

A. I thought there were enough marshals there to investigate it.

Q. When was the first time you told this thing?

A. Why, the first time I saw Mr. Lewis.

Q. When?

A. I don't recollect how long.

Q. Did you tell anybody else?

A. I told it a number of times.

Q. To whom, and when?

A. I told two or three merchants at Tulsa.

Q. Are they here?

A. No, sir.

Q. You knew that this man was going to swear a lie against Mr. Lewis, and as you thought it your duty to go and inform Mr. Lewis of this fact, you consented to go, and still you went, and did not see Mr. Lewis. How far was the camp from town?

A. I suppose about half a mile.

Q. Why didn't you go out to the camp and not wait for Mr. Thomas?

A. Well, I was sick and in a hurry to get home.

Q. How far did you live from Tulsa?

A. About ten miles.
Q. That ride didn't kill you?
A. No, sir.
Q. You rode home?
A. Yes, sir.
256 Q. Was you ever here as a witness for Mr. Lewis in the different trials he has had of this case?
A. No, sir.
Q. Did you see Charlie Leflore when you were up there to see Heck Thomas?
A. No, sir; I didn't see him that day.
Q. How did you know he was in the hands of Heck Thomas and Leflore?
A. Well, I had seen Leflore either a day or two before.
Q. Did you tell him about this?
A. No, sir.
Q. What other officers did you see there?
A. Cap. Tyson.
Q. Do you know Burrill Cox?
A. Yes, sir.
Q. How long have you known him?
A. Six or seven years.
Q. Did you tell him?
A. I don't think he was an officer at the time.
Q. Wasn't he riding posse for Heck Thomas?
A. He might have been.
Q. He became an officer afterwards; did you tell him?
A. No, sir.
Q. You don't know what the note contained?
A. No, sir.
Q. You read it?
A. Hasty read it to me.
Q. You say you gave it to Thomas?
A. Yes, sir.
Mr. BARNES. Did it mention Mr. Lewis's name?
A. I think not.
Q. You say you told Mr. Lewis about this the first time you saw him; you went to Tulsa for other purposes, but intended to tell Mr. Lewis this if you saw him?
A. Yes, sir; I went for medicine for my family.
Q. You was subpœnaed as a witness for Mr. Lewis when he was indicted?
A. Yes, sir.
Q. And was down here as a witness last term of court, when this case was continued?
A. Yes, sir.
Q. Now, in regard to your name, just state about that.
A. Well, when I lived down in Texas that year we had a very dry season, and a lot of us men sent our off to a place where they could get water, and I had the biggest bunch of any of them, and had to go, and some of the neighbors had me to bring their cattle up in the fall, and there

was a man by the name of Petty that was a near neighbor that asked
257 me to bring his cattle up, and there was one old, crazy steer that I could not get to come home, and I told him about it, and he wanted me to buy him, but I would do it, and he finally told me he would give me all I would make out of him over twelve dollars, and so we was trying to drive him home, and he would not come, and we run across a butcher hunting for cattle, and I sold him for thirteen dollars. I didn't own the *street*, and couldn't give a bill of sale for him; there was a law there prohibiting a butcher from killing stock unless he had a bill of sale from the owner of the stock, and when they come to this steer, he told them who he got the steer from, and they had me arrested, and I went and told Mr. Petty, and he said it was all right, and he made a statement before the constable and the sheriff, and they said it was all right, and I had a lawyer, and he said it would not amount to anything, but then they told so many different stories about it that I was afraid they would penitentiary me, and my brother was on my bond, so I turned enough property over to him to pay my bond, and left the country, and I have got a letter from the sheriff stating that if I would come back down there I wouldn't get hurt. I went to the territory and was working on a bridge, and a fellow got to calling me Jones, and that is how I got that name. My brothers have left Texas, and moved up there, and go by the name of McChristian.

Recross-examination:

Mr. CLAYTON. You say that people began to talk, and you got afraid, and run away from that indictment.

A. It wasn't the general talk, but there was some that advised me to go.

Q. You had a lawyer?

A. Yes, sir.

Q. Did he advise you to go?

A. No, sir.

Q. What did you go for?

A. Well, I had about made up my mind to leave the country any way.

Q. You have said that you run off to keep out of the penitentiary?

258 A. I wasn't afraid I would go to the penitentiary.

Q. That is what you told Mr. Barnes.

A. Well, you can have it that way.

Q. How long was that ago?

A. It has been a little over ten years ago.

Q. And you have been in the Indian Territory ever since?

A. Yes, sir.

Q. Did you know Tom Claywell?

A. Yes, sir.

Q. Wasn't you implicated with him in cattle stealing, and didn't you come down here to give him away as an accomplice?

A. No, sir.

Q. You deny that, do you?

A. Yes, sir.

Q. You was a witness for the Government?

A. Yes, sir.

Q. Didn't Heck Thomas and Charlie Leflore come to you, and didn't you exact a promise from them that if they wouldn't send you back to Texas that you would come down here as a witness in that case?

A. No, sir.
Q. Do you deny that?
A. Yes, sir.
Q. Did your brothers go by the name of Jones, too?
A. No, sir.
(Witness excused.)

259 GUINN MCCHRISTIAN, being called and examined on behalf of defendant, testified as follows, to wit:

Mr. BARNES. What is your name?
A. McChristian.
Q. First name?
A. Quinn.
Q. Are you a brother to William and Bob McChristian?
A. Yes, sir.
Q. Where do you live?
A. Near Tulsa.
Q. Were you there at the time of the train robbery at the bridge near Gibson Station on the Verdigris River, in 1888?
A. Yes, sir.
Q. Do you know James Hasty?
A. Yes, sir.
Q. Did he have any talk with you about what he had been offered to swear in this case?
A. Well, there was four of us together after the robbery, and Hasty was there, and we was talking about the robbery, and Mr. Lewis being arrested, and Hasty said he was going to make $250.00 out of the case from one side or the other, and that was about the amount of the talk.
Q. Did he say anything about the amount he had been offered?
A. No, sir; not at that time.
Q. Did he at any other time?
A. Yes, sir; he was talking to my brother, and he said he had been offered $250.00 by the marshals to swear against Mr. Lewis, in regard to this train robbery, and he said if Mr. Lewis would give him more he would swear for him, and asked my brother if he would see Mr. Lewis.
Q. Do you know anything about your brother going to Tulsa?
A. Yes, sir.
Q. Did you see him with a note that Hasty had written?
A. Yes, sir.
Q. Did he go to see Mr. Lewis?
A. He went to town; I don't know whether he saw him or not.
Q. Are you acquainted with the reputation of Hasty for truth in that community?
A. Yes, sir.
Q. Is his reputation for truth good or bad?
A. It is bad as a general thing.

Cross examination:

260 Mr. CLAYTON. As a general thing it is bad.
Q. You say you are a brother of Bill Jones?
A. I am a brother of McChristian.

Q. Are you the brother that paid Bill's bond when he run off for cattle stealing?

A. I never paid any bond for him.

Q. Was you at home when he ran off?

A. Yes, sir.

Q. How long did you stay there after Bill left?

A. About six or seven years.

Q. Have you any other brother that paid that bond?

A. I have another brother, but I don't know whether he paid it or not.

Q. When your brother went to the Indian Territory would you address his mail to William Jones?

A. Yes, sir.

Q. What did you do that for?

A. Well, that was the name he went by.

Q. How did you find it out?

A. He could write to me that people called him Jones.

Q. Wrote back and told you the people called him William Jones, and to direct his letters that way?

A. Yes, sir.

Q. Did you do it?

A. Yes, sir.

Q. Was you ashamed of your name?

A. No, sir.

Q. Did you tell the officers down there where he was?

A. No, sir; I didn't bother myself about it.

Q. You thought you would let the officers find out for themselves, like you did?

A. I think it is enough for a man to attend to his own business.

Q. Do you know Heck Thomas and Charlie Leflore?

A. I know them when I see them.

Q. What did you leave Texas for?

A. Because I thought I could do better.

Q. Who were the three men in that tent at the time you had this conversation?

261 A. One of them was Hany Lindley, and one Jim Jinks and the other one Fread Neal.

A. Are they here?

A. No, sir.

Q. The only ones here to tell about this conversation are the McCristians?

A. Yes, sir.

Q. Did you tell this conversation to any one?

A. Oh, I told the people through the country there.

Q. Who was present when you and Hasty and your brother and Hasty were talking about sending this note to Heck Thomas?

A. Nobody but us three.

Q. Did you know what that letter was for?

A. No, sir; I had nothing to do with it, and didn't know what was inside of the envelope at all. All I know is that the envelope was backed to Thomas.

Q. Were you ever in trouble in Texas?

A. No, sir.
Q. When were you subpœnaed?
A. I don't recollect; it was quite a while before the case was to have been called at last term; something near a month.
(Witness excused.)

262 LEWIS MCHENRY, being called and examined on behalf of defendant, testifies as follows, to wit:

Mr. BARNES. Lewis, have you been sick since you have been here?
A. Yes, sir.
Q. Chills and fever?
A. Yes, sir.
Q. Where do you live?
A. I live fifteen miles southwest of Catoosa.
Q. Are you an Indian?
A. Yes, sir.
Q. What is your business up there?
A. I clerk for the district court.
Q. Do you know where the Verdigris bridge is?
A. Yes, sir.
Q. Do you know what year that killing occurred at that bridge?
A. 1888 I think it was?
Q. Where were you living at that time?
A. I was on Mingo.
Q. What doing?
A. I was working on the Perryman ranch, running cattle.
Q. I will ask you if you know the country between Tulsa and this bridge?
A. Yes, sir; I know the country pretty well.
Q. Have you been over it much?
A. Yes, sir.
Q. If at about the time this robbery occurred you saw a bunch of men riding or going over the country, state it, and where it was.
A. I saw a bunch of men about 20 miles from the bridge, riding over the prairie.
Q. How soon after that did you learn of the robbery?
A. It was in the evening of that same day.
Q. When you saw these men were you by yourself?
A. No, sir; there were two men with me, by the names of Jake and Gilbert.
Q. Where are they?
A. I don't know.
Q. Were they white men?
A. Yes, sir.
Q. How many men did you see?
A. I saw five men.
Q. Which way were you travelling?
A. I was going east and they were going west.
Q. How near were you to them?
A. About 75 or 100 yards.
Q. Was there anything about the horses you noticed?

263 A. I seen a pided animal.

Q. Is that what you would call a paint mare?

A. Yes, sir.

Q. Where was the man that was riding it?

A. He was riding at the front of the bunch.

Q. Did you notice whether any of them had guns?

A. I seen one or two guns.

Q. About what time in the morning was this?

A. About 8 o'clock in the morning.

Q. Do you know about how far it is from Tulsa to that bridge?

A. About 55 or 60 miles.

Q. I will ask you if you knew the defendant, Alexander Lewis, at that time?

A. Yes, sir; I knew him.

Q. How long had you known him?

A. I have known him about four years now.

Q. You have known him ever since about the time he came to that country?

A. Yes, sir.

Q. Was Mr. Lewis one of that party?

A. I didn't see him then.

Q. You saw the men?

A. Yes, sir.

Q. Were any of them old-looking men.

A. They were all young-looking men.

Q. You say Mr. Lewis was not with that crowd of men?

A. He was not with them when I seen them.

Q. Did you afterwards see any of these horses.

A. I saw this same animal a day or two afterwards on Mingo there. Me and a man by the name of Charley Cox was going along there running cattle, and we seen that pided animal tied out in front of Dawson's house. I don't know for certain who owned the cabin; but it was the old house on Mingo.

Q. Did you see other horses there?

A. Yes, sir.

Q. Did you see any men?

A. Two or three.

264 Q. Where is Charley Cox?

A. He is dead.

Q. Can you give the day of the week that you met this crowd of men?

A. I think it was on Saturday.

Cross-examination:

Mr. CLAYTON. When did you hear of this robbery?

A. Saturday evening.

Q. You was 100 yards from these five men?

A. 75.

Q. At that time you didn't know that a robbery had been perpetrated?

A. No, sir.

Q. And paid but very little attention to the men?

A. No, sir.

Q. You would not noticed whether Mr. Lewis was there or whether anybody else was there, not knowing that anything had been done?

A. Mr. Lewis was not there.

Q. Well, he was a comparative stranger to you, and he was a white man and you an Indian?

A. Yes, sir.

Q. How far did you live from him?

A. Six or seven miles.

Q. You didn't know him very well, did you?

A. I knew him pretty well.

Q. He was of a different race from you?

A. Yes, sir.

Q. And a much older man?

A. I don't know how much older.

Q. How old are you?

A. I am 25.

Q. You were about 20 or 22 at that time—just a young man?

A. Yes, sir.

Q. Defendant was an elderly man?

A. Yes, sir.

Q. Then you didn't run with him?

A. No, sir.

Q. A man of a different race, and whom you had only known six or seven months, might pass within 75 or 100 yards of you and you not know who he was?

A. Well, he had no whiskers if he was in that crowd, and defendant wore whiskers.

Q. Suppose he had put his whiskers down in his coat collar this way [indicating], at that distance you would not have known him, would you?

A. No, sir.

265 Q. The only reason, you think, he wasn't along was because you saw nobody with a long beard?

A. Yes, sir.

Q. Are you sure you saw five men 20 miles from that bridge and one man riding a pided horse?

A. Yes, sir.

Q. Were you looking for a man with a long beard?

A. No, sir; I wasn't looking for any man.

Q. How do you know there was no man with a long beard?

A. Well, I knew the man pretty good, and I didn't see any long beard.

Q. There might have been some men in that crowd that you would have known if you had been up to them?

A. If I had been up to them I would have known them.

Q. Did you know Queen?

A. No, sir.

Q. You didn't know Lewis well enough to know that Queen lived with him?

A. I knew he was holding cattle for Queen, but I never had seen him.

Q. You told Mr. Barnes you didn't see Mr. Lewis with those men then; when did you see him with them?

A. I never did.

Q. Why did you say you didn't see him with them then?
A. I just meant I didn't see him.
Q. Don't you know he was up there at that old log cabin when you was there?
A. No, sir; I didn't see him.
Q. How many horses did you see there?
A. Two or three.
Q. Did you see anybody?
A. I saw two or three men.
Q. Who were they?
A. I didn't know them.
Q. When you saw those two or three men at that house had you heard of the robbery?
A. Yes, sir.
Q. Didn't you have any suspicions about that?
A. No, sir.
Q. Didn't suspect that they were the men?
A. No, sir.
Q. When did you suspect it?
A. I never suspected that those men were the train robbers.
Q. If you didn't, I dont suppose you talked much about seeing them?
A. I didn't talk much about it.
266 Q. Who did you first tell it to?
A. I think a man by the name of Mount was talking to me about the case about a month ago, and I told him of seeing these men.
Q. Did you know Mount was taking a good deal of interest in working up proof for the defendant?
A. No, sir.
Q. Did you know he was a witness in the case?
A. No, sir.
Q. How do you remember that this was Saturday?
A. Because I was going down to that lake on Saturday.
Q. How do you remember that you saw five men and that there was one man riding a spotted horse, if you never spoke about it until about a month ago?
A. I seen them on that day.
Q. It is not unusual to see men riding over the prairies?
A. A. No, sir.
Q. You must have a pretty good recollection to remember all these things for 3½ years?
A. Yes, sir; I have.
Q. But you won't say who was in that crowd and who was not, under the circumstances?
A. No, sir.
Q. Mr. Lewis might have been there?
A. Yes, sir; he might have been there.
Q. Your observation was just casual?
A. Yes, sir.
Q. You paid no particular attention to the men?
A. No, sir.
Mr. BARNES. Did Mr. Lewis have a full beard at that time?

A. Yes, sir.

Q. Now, about this man Mount's talking to you about this case; how about that?

A. Well, he came to me to have some papers fixed up about some claim he had, and we was talking about the case, and I mentioned to him about having seen these five men on that day, and told him how it was.

(Witness excused.)

267 LYDIA COX, being called and examined on behalf of defendant, testified as follows, to wit:

Mr. BARNES. What is your name?

A. Lydia Cox.

Q. What is your husband's name?

A. Burrill Cox.

Q. Do you know Alexander Lewis?

A. Yes, sir.

Q. Did you hear of the train robbery at Verdigris Bridge in 1888?

A. Yes, sir.

Q. Where was your husband at that time?

A. He was with Heck Thomas, I think.

Q. Where was your home at that time?

A. Over at Red Fork.

Q. Who told you of the robbery?

A. My husband. I was away from home at the time of the robbery.

Q. When did he tell you?

A. After I got home.

Q. When did you get home?

A. I got home on Saturday and he got home Sunday.

Q. Where had you been?

A. To John Hagly's, my brother-in-law.

Q. What direction from Tulsa did he live?

A. Down the Arkansas River.

Q. How far?

A. I don't know, but it is pretty far.

Q. How far does he live from the Arkansas River?

A. From three to five miles.

Q. How did you go to Hagly's?

A. I went to Tulsa from Red Fork on the train, and then went to Hagly's in a wagon; I got the wagon from Aunt Lydia Childers.

Q. Who drove the wagon?

A. Little boy drove it going down, but when we come back I drove, because the boy was asleep.

Q. Anybody with you?

A. My little boy and my baby.

Q. How old was your boy?

A. About six years old, I reckon, he is now.

Q. When did you go to John Hagly's?

A. I went there on Saturday and came back the same day.

Q. Did you pass any hills or mountains on the way?

A. Yes, sir; there is two mountains out there on the prairie,
268 and the road runs between them, and that is the way I went.

Q. On your road to Tulsa, if you saw any men, tell us about it.

A. I was just going between them two mountains pretty near dark, and I saw five men pass right in front of me, coming from my right, going to my left.

Q. How close to you did the men pass?

A. About as close as to the corner of that house (100 feet).

Q. How many men?

A. Five.

Q. Did you notice their horses?

A. One of them was a red and white horse.

Q. Where was that horse?

A. He was next to me, so I could see him plainly.

Q. What time of day was this?

A. Saturday afternoon some time; I don't know the exact time.

Q. Did these men have guns?

A. Yes, sir; two of them had guns in their laps, and three had them on their saddles.

Q. You knew defendant at that time?

A. Yes, sir.

Q. Was he one of the five men?

A. No, sir; I knowed him quite well, and he wasn't in the crowd.

Q. Did you notice anything in any of their hands?

A. Two of them had brush in their hands, brushing flies off their horses; horses seemed to be pretty tired.

Q. Did you notice any old men in the crowd?

A. No, sir; all young men.

Q. Where was the man that was riding the paint horse?

A. He was kind of in front.

Q. Was he young looking or old looking?

A. He was young looking.

Q. Well, you went home, and the next day your husband came home and told you of the robbery?

A. Yes, sir.

Q. Did you tell him of meeting these five men?

A. Yes, sir.

Q. After that did you see Mr. Lewis?

269 A. Yes, sir; I saw him in camp at Tulsa, and I asked my husband what they had him there for, and he said he was one of the robbers, and I told him he wasn't one of the men I saw that day.

Mr. CLAYON. If your honor please, I don't believe that testimony is competent.

The COURT. I don't think the statement is competent at this stage of the case.

Mr. CLAYTON. If she will say she made that statement in the presence of Heck Thomas, I have no objection to it.

Mr. BARNES. However that may be, you saw those five men, and when you learned Lewis was charged with the murder you didn't recognize him as being one of those five men?

A. No, sir; he wasn't one of those five men.

Cross-examination:

Mr. CLAYTON. Where is Burril Cox?
A. I reckon he is at home.
Q. He is not here?
A. He is not here.
Q. He is alive?
A. Yes, sir.
Q. When did you see Mr. Lewis there in camp?
A. It was about a week after I got home.
Q. Was you ever at Lewis's house?
A. Yes, sir; I was there twice.
Q. When was the first time you were there?
A. About a year ago; some time last summer.
Q. Was your husband ever there before the robbery?
A. I don't know.
Q. Was Lewis ever at your house?
A. Yes, sir; he would come there and eat dinner.
Q. What would he do that for?
A. He come because he was acquainted with my old man, I reckon.
Q. Do you know how long before the robbery you saw Mr. Lewis?
A. About a year or two, I guess.
Q. Now, then, these men had guns, you say?
A. Yes, sir.
Q. Did they have any pistols?
A I never noticed any.
Q. What kind of guns?
A. Winchesters, I think.
Q. What day was that?
A. Saturday.
Q. What day was your last child born on?
A. I don't know.
270 Q. What day did you get here?
A. Thursday, I think.
Q. What day of the week did Christmas come on last year?
A. I don't know.
Q. How do you know it was Saturday you saw these men?
A. Because I know the next day, when I got home, it was Sunday.
Q. Do you know how long Lewis had been in the country at that time?
A. No, sir.
Q. You had known him a good many years before that?
A. Yes, sir.
Q. How many years—four or five?
A. Yes, sir.
Q. Had you seen him in Red Fork four or five years before that?
A. Yes, sir.
Q. You know what you are talking about, do you?
A. Yes, sir; I do.
Q. From one winter to another is a year, isn't it?
A. Yes, sir.
Q. You understand English, don't you?
A. Yes, sir.

Redirect examination:

Mr. BARNES. This has been a long time ago, but you do know that you had seen Mr. Lewis before this robbery occurred, do you?

A. Yes, sir.

Q. Can you read and write?

A. No, sir.

Q. And you have tried to tell the truth about this, *jsut* as you recollect it?

A. Yes, sir.

Mr. CLAYTON. You know Heck Thomas pretty well?

A. Yes, sir.

Q. Did you tell him Mr. Lewis wasn't the man?

A. Yes, sir; I told him at my house.

Q. Now, when you saw that crowd of men, didn't you think it was a band of deputy marshals?

A. Yes, sir.

Q. They often ride around, four or five in a crowd?

A. Yes, sir.

(Witness excused.)

271 CARL LEWIS, being called on behalf of defendant, testified as follows, to wit:

Mr. BARNES. State your name.

A. Carl Lewis.

Q. How old are you?

A. I was 16 on the second day of last July.

Q. Are you a son of this defendant?

A. Yes, sir.

Q. You know he is charged with train robbery and murder?

A. Yes, sir.

Q. Now, with reference to the time of this occurrence, where were you living at that time?

A. We were living on Coal Creek, about four or five miles east of Tulsa, in the Cherokee Nation; I would think about five miles.

Q. How long had you been up there in that country?

A. We had been there about two years at that time, two or three years, I don't remember just exactly how long.

Q. Where had you lived before that?

A. When we first come to the country we lived on Mingo's, eight miles east of Tulsa, I guess about a month, and we moved half a mile from where we now live, and then rented a place from a man by the name of John Johnson, and then moved on the place where we are now living.

Q. How many children are there?

A. There is eight in the family now; there was six then.

Q. There has been twins since then?

A. Yes, sir.

Q. Were you two boys that are here the oldest of the children?

A. Yes, sir.

Q. Which is the older, you or your brother?

A. My brother.

Q. Did your father have any contract there with Mr. Baer?

A. Yes, sir; he had taken a contract to put up a mile of fence, I believe, and to plow and grub 50 acres of land.

Q. Do you know a man by the name of James Hasty?

A. Yes, sir; he was working for us at the time.

Q. Did you know Kep Queen?

A. Yes, sir.

272 Did your father have any business dealings with him before this time?

A. Yes, sir; my father had his cattle on the shares; that was about all.

Q. Do you know how many head of cattle he had?

A. No, sir; I don't remember just exactly; there was one hundred head in the start.

Q. At the time of this train robbery your father was handling these cattle on the shares?

A. Yes, sir.

A. Do you know about how long he had been handling them?

A. Well, he had got them along in the fall before the robbery was committed in June.

Q. Did you boys work any with the cattle?

A. Yes, sir; we herded cattle all the time.

Q. Outside of that he had this contract that you speak of?

Y. Yes, sir.

Q. What was Hasty doing?

A. He was breaking sod.

Q. What team was he using?

A. Well, he broke with a bay horse and a brown horse, and a blue horse, and a little mare and a black mare.

Q. You speak of a blue horse and a brown horse. Do you know how your father got them?

A. Mr. Queen brought them there; I believe it was somewheres about the last of April; brought them there, I don't remember just when it was, and sold them to my father. Buck wanted a team to break sod with.

Q. Was you present when the trade was made?

A. Yes, sir.

Q. What was it?

A. Pa was to give him $50.00 a piece. Kep said he didn't need them.

Q. How did he claim he got them?

A. He claimed he got them from his cousin or uncle by the name of Van Brunt or Van Horn. He said he had taken them on an old debt and didn't need them, and would sell them, and said he would let pa have them cheap.

Q. That was the blue or iron-gray horse?

A. Yes, sir; and the brown.

Q. Do you remember how they were branded at that time and what was done about branding them afterwards?

273 A. I don't remember, but I know my father put his brand on them after he had had them about a week or ten days.

Q. I suppose you saw these men, Holloman and Johnson and Queen?

A. Yes, sir; this man Holloman said his name was Jo Foster.

Q. Did you see John Barber?

A. No, sir; not until after this occurrence.

Q. Do you remember how long after the occurrence it was that he came to your house?

A. No, sir; I don't.

Q. He was at your house afterwards?

A. Yes, sir.

Q. Who was with him at that time?

A. Kep Queen.

Q. You remember seeing him and Kep Queen at your house after the occurrence?

A. Yes, sir.

Q. Had your father been arrested then?

A. Yes, sir.

Q. But you had seen these other men before that time?

A. Yes, sir.

Q. What name was Johnson going by?

A. He said his name was Jim Johnson.

Q. Beofre this robbery, do you know anything about any horse coming there?

A. Yes, sir; these men had some horses there.

Q. Did you see a paint mare there?

A. Yes, sir.

Q. Do you know who brought her?

A. No, sir; I believe Kep Queen rode her and owned her.

Q. Do you know how many times or just how long it was before the men went off from your house that she was there?

A. No, sir; I don't.

Q. Did you see her there before they left?

A. Yes, sir.

Q. Did they have any other horses?

A. Yes, sir; they had a little bay horse, I don't remember just exactly how many horses they had.

Q. There was a man called Rogers, who went by the name of Sam Holloway. Was he there with those men?

A. Yes, sir.

274 Q. Do you know whether your father made any payment on those two horses?

A. He paid them $25.00, I think it was.

Q. What occurred about that?

A. Well, my father went to town and got the money; I don't know where he got the money, but he got the money and paid Mr. Queen $25.00, I think it was, down.

Q. Was you present when he paid it?

A. Yes, sir.

Q. Who else was present?

A. A man by the name of Marion Snow, and two Dawson boys.

Q. Do you know where any of these men are now?

A. No, sir.

Q. Was your brother present?

A. I don't recollect.

Q. You were present?

A. Yes, sir.

Q. How soon was he to pay the balance, or any part of it, or was there anything said about the balance?

A. I don't remember hearing anything said about it.

Q. You know he went to town and got $25.00, and, in the presence of these parties that you have named, paid that $25.00 on the trade for these horses?

A. Yes, sir.

Q. Now, then, do you know anything about any other trade after that, about Queen getting any of those horses after that?

A. Yes, sir; a few days before they left our house, I don't know how long it was, Queen said he wanted that blue horse, and that he would give pa a better price than he sold him to him at if he would let him take him back, and pa didn't want to let him go, and finally he told Queen he would let him have him, and Queen took him.

Q. This was several days before they left your house?

A. Yes, sir.

Q. Did you see your father in possession of the horse after that?

A. Yes, sir.

Q. Do you know anything about how he got him back?

A. No, sir; I don't know anything about that.

Q. You don't know anything about the trades, except the first
275 one, when he told your father he would give him a better price than he had piad for him, and your father let him have him?

A. Yes, sir.

Q. And after you saw Queen with the horse and after that you saw your father with him again?

A. Yes, sir.

Q. That was several days before Queen left there that Queen got the horse?

A. Yes, sir.

Q. Now, you know when your father was arrested, I suppose?

A. Yes, sir.

Q. Soon after the time it is claimed the robbery was done?

A. Yes, sir.

Q. Now, after those men were at your father's place there; previous to his arrest, and went away and then came back there, about how long was it before he was arrested?

A. That they left our house?

Q. Yes.

A. I think it was about a week or ten days, some where along there; I don't know exactly.

Q. Before he was arrested, that the crowd of them left there?

A. Yes, sir.

Q. Now, if, after they left, they were back there again before your father was arrested, did you see them?

A. No, sir; Queen came back there.

Q. If they camped there, and staid a night about the premises, did you see them?

A. No, sir.

Q. You don't know, then, of your own knowledge, whether they were back there or not?

A. No, sir.

Q. Can you remember the Saturday before your father was arrested?

A. No, sir; I don't remember a thing about it.

Q. Whether you was with the cattle, or whether you was about the house?

A. No, sir; I don't remember.

Q. Now, you say you saw Queen again before your father was arrested?

A. Yes, sir.

Q. Who was with him?

276 A. Will Dawson and him come over to our house one day.

Q. Now, what is your recollection about the day on which your father was arrested?

A. Well, sir, I don't remember exactly; it was several days after the report of the robbery.

Q. Do you remember what day you heard of the robbery?

A. No, sir; I don't.

Q. You can't remember what day he was arrested?

A. No, sir; I don't.

Q. Well, with reference to that time, just before he was arrested, and at the time of the report of the robbery, I want to know if he was away from home to stay all night any night.

A. No, sir; he was not.

Q. Do you know about his going off with any crowd of men to take the train at Tulsa?

A. No, sir; he didn't go away with any men to take the train at Tulsa.

Q. Did you know anything about any robbery going to be committed?

A. No, sir; I didn' know that.

(Here court takes a recess until half past one.

Afternoon session, Oct. 23, 1891, 2 p. m.

Carl Lewis on the stand (continued):

Mr. BARNES. Carl, do you know what kind of a beard your father wore at that time?

A. Yes, sir; he wore his beard—it run all the way up here (putting his hands to the sides of his face). More beard than he has now.

Q. All over his face?

A. Yes, sir.

Q. Do you know whether he wore his beard that way or not all along until he has been confined in jail?

A. Yes, sir.

Q. He wore it that way when he was down here the first time, didn't he?

A. Yes, sir.

Q. Wore it full?

A. Yes, sir.

277 Q. (Handing witness note.) Look at that note, and see whether you signed it?

A. Yes, sir; I signed it.

Q. You see this writing of Mr. Hasty's over here?
A. Yes, sir.
Q. State whether or not that writing on that note was all done at the same time.
A. Yes, sir; my father wrote the note, and me and my brother signed there, and Mr. Hasty signed there [indicating].
Q. You see the date of it?
A. Yes, sir; June 16.
Q. Now, tell me how that came about, and how it came to be made.
A. Well, my brother was breaking a gray two-year-old colt, and he wanted to buy him, and pa told him he would let him have the colt for $15.00, I believe; and he told him he would take it, and he give him a year to pay it in; and pa said he wanted to learn us to do business; and my brother gave him that note, and I went his security, and Mr. Hasty signed it as a witness.
Q. Do you remember what was said or done about the date?
A. Yes, sir; my brother asked Hasty what day of the month it was, and he said he had an almanac and he would go and see; and he went and got his almanac and looked at it, and came back and said it was the 16th.
Q. Where did he get his almanac?
A. Out of his valise.
Q. Do you know how much your father had written when Hasty went to look for the date?
A. No, sir; but I think he had commenced writing.
Q. When was this?
A. It was after dark.
Q. Who was present at that time?
A. Well, all of our family and Hasty was there.
Q. Do you know whether Buck had claimed any interest in any other animals there?
A. Yes, sir; he owned or claimed a gray mare there that my father was working in the sod; and he said if pa had to take her and work her he wanted the colt.
Q. Then your father and him made the trade about the colt?
A. Yes, sir.
Q. And then he gave the note in that way and Hasty witnessed it?
A. Yes, sir.
278 Q. After your father was writing on the note he asked Hasty what was the day of the month, and Hasty said he would look at his almanac and see?
A. Yes, sir.
Q. And the note was filled up and signed there at that time?
A. Yes, sir.

Cross-examination. The DISTRICT ATTORNEY:

Q. Now, Mr. Lewis, you are 16 years old?
A. Yes, sir; I was 16 on the second day of last July.
Q. Then in June, 1888, you wasn't quite 13 years old?
A. No, sir.
Q. Your father was teaching you to do business very young?
A. I don't know whether you would call it that or not.

Q. If you went your brother's security, why didn't you endorse the note upon the back?

A. There is where my father told me to sign it?

Q. Had you ever signed a note before?

A. No, sir; I never signed any notes before.

Q. Have you ever signed any since?

A. No, sir.

Q. That is the only note you ever signed in your life?

A. Yes, sir.

Q. Your father quit teaching you business after getting the date of the 16th of June upon that; he never taught you how to do business after that?

A. He taught me how to do right.

Q. I suppose he sent you to Sunday school?

A. No, sir; he never sent me to Sunday school.

Q. Did you ever go to Sunday school?

A. Yes, sir.

Q. 13 years old, and go your brother's security on a note for $15.00 on the 16th of June?

A. Yes, sir.

Q. Never signed a note before nor since?

A. No, sir.

Q. Your father was very anxious to have a paper that had on it the date of that night?

A. I don't know.

279 Q. He was very anxious to get the right date, because he had Hasty go and get the almanac?

A. Yes, sir.

Q. I notice this is changed from the 15th to the 16th. Why didn't you fix this up in the day time?

A. Because Buck never named the trade in the day, and because my father and Buck wasn't together in the day.

Q. Where was your father?

A. He had been to town that day.

Q. Where was he the day before?

A. He went to town the day before.

Q. Went to town both days?

A. Yes, sir.

Q. Where was he the day before that?

A. He was down to Beard's farm.

Q. Where were you?

A. I was there too.

Q. What time did your father get home on the 16th?

A. I don't remember just exactly what time; he was there at night.

Q. He was at town on both the 15th and 16th?

A. Yes, sir.

Q. Was you at town with him?

A. No, sir.

Q. He came home just before night?

A. I don't know when he came home; I don't remember; I know he was there when that note was written.

Q. Where was Queen that night?
A. I don't know where Queen was.
Q. Where were the rest of the men that night?
A. I don't know.
Q. They slept out under the trees?
A. Not that I know of.
Q. Then, on the night of the 16th of June, after your father came home, you got up this note business here?
A. Yes, sir.
Q. That was the 16th?
A. Yes, sir.
Q. What makes you remember that it was the 16th?
A. Well, sir, by Mr. Hasty getting his almanac, and saying it was the 16th.
Q. You remember that for three and a half years?
A. Yes, sir.
Q. These things that you are telling about all occurred about three and a half years ago?
A. Yes, sir.
Q. I suppose you remember them pretty well?
A. Yes, sir.
Q. Well, what makes you remember them so well?
280 A. Well, sir, my father was arrested after the robbery a few days, charged with the robbery, and I wanted to bring these things to memory.
Q. And you remembered about this note?
A. Yes, sir.
Q. Your father being arrested made you remember about this note business?
A. Yes, sir.
Q, That he was at home the night of the 16th?
A. Yes, sir.
Q. When was it that these robbers came to your house?
A. Well, sir, I don't know what day it was.
Q. How long had they been there?
A. I don't know exactly how long.
Q. A week, or two or three weeks?
A. Yes, sir; they had been there, I guess, a week.
Q. Had they been there that long?
A. Yes, sir.
Q. Had they been there longer?
A. I don't know exactly.
Q. What were they doing there that week?
A. They wasn't doing anything only just riding around.
Q. Now, these two horses, the bay and the paint horse, wasn't there until about two weeks before the robbery?
A. I don't remember.
Q. Who stole those horses?
A. I don't know.
Q. The robbers were at your house about a week, riding around? Did your father ride around any with them?
A. No, sir.

Q. He rode around with them after the robbery?
A. No, sir.
Q. Wasn't he there at Dawson's house on Monday?
A. Yes, sir; he was there one day.
Q. What was he doing there?
A. I believe he was playing cards.
Q. Why didn't he stay at home?
A. I guess he didn't want to.
Q. Did you ever see your father playing cards with them before?
A. I don't know that I ever did.
Q. They had been there a week or more, and that is the first time you saw them playing cards, over there at Dawson's?
A. I didn't see them. My father told me he was playing cards.
281 Q. When did he tell you?
A. I don't know what time; I heard him say afterwards that he was playing cards.
Q. When did he go over there to the Dawson house?
A. He went over there in the morning.
Q. Was he over there with them Sunday?
A. I don't remember.
Q. You don't remember where your father was on Sunday?
A. No, sir.
Q. Where was he the day after you signed this note—what day of the week would that be that you signed this note?
A. It would be the 17th.
Q. What day of the week?
A. It would be Sunday.
Q. Where was your father Sunday?
A. I don't know.
Q. On Friday and Saturday both, he was away at town?
A. Yes, sir.
Q. Where was he Sunday?
A. I don't remember.
Q. Who all was at your house before this robbery?
A. Well, there was these four men.
Q. Who?
A. Kep Queen, Jim Johnson, Jo Foster, and Sam Holloway.
Q. Who is Jo Foster?
That is Holloman.
Q. And Sam Holloway?
A. That was Rogers.
Q. These four men were at your house?
A. Yes, sir.
Q. They were there, you say, a week or more?
A. Yes, sir; I don't know just how long.
Q. Did they pay board?
A. Yes, sir; I think they settled with pa for board; I don't know for certain.
Q. You think they did?
A. Yes, sir.
Q. I guess you are not certain about that?

A. No, sir; I am not certain about that.
Q. What were they doing there?
A. I don't know what their business was.
Q. Well, they were horse thieves and train robbers?
A. I don't know whether they was or not.
Q. What were they doing there?
A. I don't know; they rode around there.
282 Q. Did they sleep there?
A. Yes, sir?
Q. Slept and ate at your house?
A. Yes, sir.
Q. Did they hang around the haystacks, and play cards?
A. I don't know; not that I seen.
Q. What were they doing when they wasn't playing cards?
A. Well, they was gone most of the time. Sometimes they would be sitting around talking, if they didn't have any work to do.
Q. Now, those two horses that had your father's brand on, they come there in April. How long were they there before your father bought them?
A. Queen brought them there one morning and pa bought them the same day.
Q. Did he put his brand on them that day?
A. No, sir.
Q. How long after that?
A. I don't remember exactly how long; I guess it was about a week; I don't remember exactly.
Q. Who was at your house then?
A. When they was branded?
Q. No, when they were brought there by Queen?
A. Well, he didn't bring them to our house, he brought them to where we was working.
Q. Anybody with Queen when he brought the horses?
A. My cousin, Will Dawson, was there. He staid all night that night.
Q. Will Dawson is your cousin?
A. Yes, sir.
Q. None of these other men were there?
A. No, sir.
Q. How is it that these horses were away from there when this robbery was perpetrated?
A. Well, my father had let Queen have the blue horse back.
Q. Well, how does it happen that your father was arrested on the blue horse?
A. Well, Queen come to our house afterwards and let my father have it back.
Q. Queen stole the horse in April, brought it there and sold it to your father, and then, within a week after your father got him he put his brand on him, and then Queen bought him back again before the robbery, and then came back after the robbery and let your father have him
283 back again?
A. Yes, sir.
Q. Did Queen put his brand on him?

A. No, sir.
Q. Why?
A. I don't know what was the reason.
Q. He bought him from your father, took him away on the robbery, and just as soon as he got back he turned him back to your father. You know that?
A. I don't know where he got back from.
Q. Your father had him just before the robbery, and he had him just after the robbery?
A. Yes, sir.
Q. When did Queen get back?
A. I don't know; I think it was on Monday; I don't know exactly what time.
Q. Had Queen got back when you signed the note?
A. He didn't get back until after we signed the note.
Q. How long afterwards?
A. I don't know exactly how long afterwards.
Q. About how long?
A. I guess it was a few days; I don't remember how long; a few days, I think.
Q. Don't you know your father was arrested a few days after that?
A. Yes, sir.
Q. Then Queen must have got back before a few days afterwards?
A. Queen got back before he was arrested.
Q. Your father was arrested on Tuesday?
A. I think it was Tuesday night he was arrested.
Q. Then, if Queen got back two days before that, he must have got back on Sunday?
A. I didn't say two days; I said a few days.
Q. Is one day a few days?
A. Well, I didn't say exactly what time.
Q. You don't know any day but the 16th. That is the only day you can fix now?
A. I can fix the 15th.
Q. You have said that your father was away from home on the 15th?
A. No, sir.
Q. Yes, you have.
A. Yes; I said he was at town.
Q. At town on the 15th, and at home on the 16th?
A. Yes, sir.
Q. On the 16th he came back home, and on the night of the
284 16th you signed this note?
A. Yes, sir.
Q. How far is it to town?
A. About five miles.
Q. What horse did your father ride?
A. He rode the gray mare of ours.
Q. Don't you know that Mr. Hasty had the gray mare at work?
A. No, sir; he didn't have her.
Q. He didn't?
A. No, sir.

Q. Didn't?
A. No, sir.
Q. The blue horse wasn't there then, was it?
A. No, sir.
Q. How many horses was Mr. Hasty working?
A. Three.
Q. What three?
A. Well, sir, he was working the bay horse of ours, and a brown horse, and a black mare.
Q. Wasn't he working the gray mare, and the brown and the bay?
A. No, sir; my father was riding the gray mare.
Q. What did you say he was working?
A. I said he was working a black mare, and a brown and a bay horse.
Q. He was?
A. Yes, sir.
Q. You are sure of that?
A. Yes, sir.
Q. And your father was riding the gray mare?
A. Yes, sir.
Q. That is on the 15th and 16th, when he was at town?
A. Yes, sir.
Q. Where did you sleep?
A. I slept in the house on the bed.
Q. How many rooms in the house?
A. Two.
Q. Did you sleep in the same room with your father?
A. Yes, sir.
Q. You always slept in the same room with your father and mother?
A. Yes, sir.
Q. When was it that Barber came there?
A. He came there after the robbery, and after my father had been arrested.
Q. How long after your father was arrested?
A. I don't remember how long.
Q. Was it after your father was arrested and got loose?
A. No, sir; he was arrested when Barber first come there.
285 Q. He came there with Queen?
A. Yes, sir.
Q. That was the first time you had ever seen John Barber?
A. Yes, sir.
Q. What was he doing there?
A. He wasn't doing anything.
Q. How long did he stay?
A. He staid one day and night, I believe; about that.
Q. What was he doing there?
A. He wasn't doing anything.
Q. He was a noted man, wasn't he, and charged with being a train robber and a bank robber?
A. I didn't know it.
Q. Had you heard of the Prior Creek robbery?
A. Yes, sir.

Q. What were all these robbers doing at your house?

A. Wasn't doing anything. They staid and boarded at our house a while.

Q. You was keeping these men around there?

A. Well, Kep Queen was a cousin, and we had his cattle on shares.

Q. Queen was your cousin?

A. Yes, sir; he was a second or third cousin to me, I guess.

Q. And he come there, and these other men cam' with him, and they came when they got ready, and left when they got ready. You never ran them off?

A. No, sir; we never run them off.

Q. Wasn't Barber some relation to you?

A. Yes, sir.

Q. What relation was Barber?

A. I guess he was about a second or third cousin.

Q. Queen was your second or third cousin, and Barber was your second or third cousin?

A. Yes, sir.

Q. Any of the rest of these robbers any relation of yours?

A. No, sir.

Q. Good blood. You say that Barber was your cousin, and never saw him before?

A. No, sir.

Q. How does it happen that you never saw your cousin before?

A. We didn't live very close together.

Q. I suppose your cousin Queen and your cousin Barber came
286 down to spend a kind of a pleasant visit there visiting their relatives?

A. I don't know.

Q. What hor'e was Queen riding when he came down there to pay that memorable visit?

A. I don't know what horse.

Q. What became of the paint horse?

A. Well, sir, Bud Heady got her.

Q. That was a stolen horse?

A. Yes, sir; I heard it was afterwards.

Q. These two other horses your cousin Queen stole and sold them to his cousin, your father?

A. Yes, sir.

Q. Were they cousins on your fathers's side, or on your mother's?

A. On my mother's.

Q. Where did you live before you came to the Indian country?

A. We lived in Texas.

Q. What part of Texas?

A. Well, sir; I was pretty small, and I don't know just exactly what part. We lived on the Staked Plains, tolerable close to New Mexico.

Q. Close to the Mexican border?

A. Yes, sir; I guess so.

Q. Near the Rio Grande river?

A. No, sir.

Q. Did you ever see any Greasers down there?

A. No, sir? not in Texas.

Q. Where did you see them?
A. I saw them in New Nexico.
Q. You lived in New Mexico a while, did you?
A. Yes, sir.
Q. These Greasers talk Spanish, don't they?
A. Yes, sir.
Q. Did you talk Spanish?
A. Not much; I know a little of it.
Q. Your father talks it?
A. Yes, sir; my father talks it some.
Q. Queen talked it, I suppose, too?
A. I don't know whether he did or not.
Q. Well, Queen lived down there a while, didn't he?
A. Not that I know of.
Q. You knew he talked Spanish some?
A. No, sir; I don't know whether he did or not.
Q. Did you ever here Queen talk Spanish?
287 A. No, sir; I didn't care whether he talked Spanish or not.
Q. Did you live in Texas on the Staked Plains before you went to New Mexico?
A. We lived in Texas, but we didn't live on the Staked Plains.
Q. Near the Staked Plains?
A. Yes, sir.
Q. How long did you live in New Mexico?
A. I don't know.
Q. How old was you when you left New Mexico?
A. I don't know.
Q. You ought to know. You remember you lived in Texas?
A. Yes, sir, but I don't remember now how old I was.
Q. How old was you when you went to New Mexico?
A. I don't know.
Q. Where did you go to from New Mexico?
A. We went back to Texas.
Q. Lived in New Mexico, and then went back to the Staked Plains?
A. Yes, sir.
Q. How long did you remain on the Staked Plains?
A. About a year and a half or two years.
Q. Then where?
A. Then here.
Q. Then to the Indian country?
A. Indian Territory.
Q. What did you go to the Indian country for?
A. Because we thought it was a pretty good country, and we had heard our people had a right up there.
Q. You wanted to go up and be Indians?
A. Yes, sir.
Q. When did you go to the Territory?
A. I guess we come here about five years ago. I am not sure.
Q. Do you rememember what year it was you came in?
A. No, sir.
Q. Do you remember the year of this robbery?

A. Yes, sir; it was in 1888.

Q. Why do you remember that, and don't remember the year you came to the Territory?

A. Well, after my father was arrested——

Q. That was an era in your life?

A. No, sir.

Q. What then?

288 A. Well, I knew it was 1888, and we looked at the almanac and saw what date it was. After my father was arrested, we knew we would have to be witnesses, and we looked at the almanac to see what date it was. My grandfather told us we had better look and see what date it was.

Q. Where did your grandfather live?

A. He lived about a quarter of a mile from there.

Q. What was his name?

A. Dawson.

Q. So your mother was a brother to Will Dawson?

A. No, sir.

Q. Sister?

A. No, sir.

Q. What was she?

A. She was a cousin.

Q. First cousin?

A. I don't know; she was a first or second cousin.

Q. At any rate she was a Dawson; and old man Dawson, who was your grandfather, came there and told you you must look up these dates?

A. Yes, sir.

Q. What was Barber's mother's name?

A. I don't know.

Q. Was she a Dawson?

A. No, sir.

Q. You know you are related to them?

A. Yes, sir.

Q. Do you know that Queen was a Dawson?

A. His folks came from the Dawsons; yes, sir.

Q. Who told you first about this robbery?

A. Well, sir, the first I heard of it, I think, was from a man that I met that had been looking for Mr. Beard, he said, and he told me about the robbery. He said he heard of it at Tulsa.

Q. What became of the bay horse that had your father's brand on him?

A. My father traded him off; I don't know.

Q. Do you know they came there and took him from Hasty; which one of the bay horses did your father trade off?

A. We didn't have but one bay horse at the time.

Q. Who did he trade it off to?

A. He traded it to some man in the Chickasaw Nation.

289 Q. What became of the horse?

A. I don't know what became of him after he traded him off.

Q. What became of the brown?

A. The man that come after him said he was a stolen horse, and took him away.

Q. Did he take it away from your father?
A. Yes, sir.
Q. Are you sure?
A. No, sir; I wasn't with him.
Q. Don't you know that the marshals came there and took him away from Hasty when he was at work in the field?
A. I believe so.
Q. Both of them stolen horses?
A. Yes, sir; I guess so.
Q. I suppose you are a little proud of your family—that is, the Dawson side of it?
Mr. BARNES. I don't hardly believe that has anything to do with the case.
Mr. CLAYTON. All right.

Re-direct examination:

Mr. BARNES. You say Dawson was kin to your mother?
A. Yes, sir.
Q. Your mother and Will Dawson were cousins?
A. Yes, sir.
Q. Now, as to Will Dawson, he was brought down here once on this case and kept here a while, just like your father, and there was no case against him, and he was turned loose?
A. Yes, sir.
Q. And it was while he was charged with this, just like your father, that old man Dawson told you you had better look up about these dates?
A. Yes, sir.
Q. Old man Dawson proved up his rights there, and is a citizen of the Indian country?
A. Yes, sir.
(Witness excused.)

290 BUCK LEWIS, being duly sworn and examined on behalf of defendant, testified as follows:

Examined by THOS. H. BARNES, Esq.:

What is your name?
A. Buck Lewis.
Q. State your name in full.
A. Stephen Riley Lewis.
Q. How old are you?
A. I will be 18 on the 27th day of this coming December.
Q. They call you Buck?
A. Yes, sir; called me that all my life.
Q. You know the charge here against your father? Now, with reference to the time of the train robbery and murder down near Gibson Station, at the Verdigris bridge; I will ask you if you heard of that occurrence?
A. Yes, sir; I heard of it.
Q. Before that time had Buck Queen been about your place?
A. Kep Queen had been there.
Q. Kep Queen and who else?

A. Tom Johnson, and Jo Foster, and Mr. Hollway.

Q. Queen had some cattle up there that your father was handling?

A. Yes, sir.

Q. And he staid about your place there?

A. Yes, sir.

Q. Now, I will ask you if you know anything about some horses that your father got a while before this occurrence?

A. My father got a span of horses from Kep Queen.

Q. Do you know when that was?

A. It was sometime in April.

Q. What kind of horses were they—what description?

A. One of them was an iron-gray horse, and the other was a brown.

Q. Were any brands put on those horses?

A. Yes, sir; we branded them about a week or ten days after my father bought them from Kep Queen.

Q. Were you present when he bought them?

A. Yes, sir.

Q. Tell about the trade.

291 A. Kep Queen and one of my cousins by the name of Will Dawson came down to where my father was at work on Beard's farm sometime in the morning, and brought the horses with them, and Kep Queen stood around there a little while and told my father that he had got a span of horses from one of his cousins that lived up in Missouri, and he said he had got them on an old debt, and he would sell them cheap because he was needing the money.

Q. Did he say what business his cousin was in?

A. He said he was in the saloon business.

Q. Do you know what town he was from?

A. No, sir; he told us the town, but I forget where.

Q. How much was your father to pay him for the horses?

A. He was to pay him $50.00 apiece for the horses.

Q. Did you see him pay anything?

A. I seen him pay $25.00 down.

Q. How long after that?

A. It was the next day—I think it was the next day, if I am not mistaken.

Q. How long had Queen been back when he made this trade?

A. He said he had just got into Will Dawson's that evening before, and staid all night at Will's, and come over there the next morning.

Q. Then, the trade was made the day after he got there?

A. Yes, sir.

Q. He didn't stay at your house all night, then?

A. No, sir.

Q. Well, if there was any other trade made about these horses, tell what it was.

A. Well, we kept the horses and worked them, I don't know hardly how long, but I think nearly two months, and Queen told my father he wanted to buy the iron-gray horse back, and he would make a better price than he sold him for, and my father told him he didn't see how he could let him have him, as it would break up his plow team, and he told my father he would give him $75.00 for the horse and would pay him as soon

as he got the money, and if he didn't pay him, my father could take the money out of the cattle, and my father let him have the horse.

Q. What became of Queen after that—how long after that before he went away, if he did go away?

292 A. After he bought the horse?

Q. Yes, sir.

I don't know exactly; it wasn't but just a short time.

Q. What time?

A. Why, they left in the evening when they left.

Q. How many of them left?

A. Four of them.

Q. Left in the evening?

A. Yes, sir.

Q. How long did they leave there before you heard of this robbery—or perhaps you can remember best from the time your father was arrested?

A. Well, they left about a week—over a week—or a week, any way, before my father was arrested.

Q. And they left in the evening?

A. Yes, sir.

Q. Do you know where they were going?

A. I know where they said they was going.

Q. Where?

A. Queen said they was going—he told my mother to get an early supper, that he wanted to see Uncle Ike—that was Ike Barber, and that he wanted to see John.

Q. That is as far as you know where they went?

A. Yes, sir.

Q. Did he take away that blue horse, or gray horse?

A. Yes, sir.

Q. Well, your father seems to have had that h'rse when he was arrested a few days afterwards.

Q. Do you know anything of your own knowledge how he come by him? If you do, tell me.

A. Well, I didn't see him when he got the horse back.

Q. You don't know except what you heard told, and that you are not entitled to say, but you saw him with him; when did you see him with the horse?

A. I don't know, but he brought the horse home; he had been away to Will Dawson's.

Q. Your father went over to Will Dawson's and brought the horse back?

A. Yes, sir.

Q. What day was that?

A. I think it was Monday.

Q. The next time you saw that horse after Queen and those parties left there, and announced that they were going to Uncle Ike's, was

293 when your father came back on him from Will Dawson's?

A. Yes, sir.

Q. You remember of him bringing him from Will Dawson's?

A. Yes, sir. He told me he got the horse back, but I don't know how.

Q. He went over to Will Dawson's and came back with the horse?
A. Yes, sir.
Q. (Handing witness note.) Did you ever see that note?
A. Yes, sir.
Q. Was you present when that note was written?
A. Yes, sir.
Q. Who wrote the body of the note?
A. My father.
Q. Whose signatures are these?
A. That signature is mine, and that is my brother's.
Q. Who wrote this?
A. J. B. Hasty, or James Hasty.
Q. Tell us the circumstances about the note. In the first place, was all this writing done at the same time?
A. Yes, sir; it was written all at the same time.
Q. Just tell the circumstances of it.
A. Well, I was breaking a young horse of my father's; he was a tolerable good horse, and after my father sold Queen that horse that cut us down some aboud riding-horses, and I told my father I would like to buy that horse if he would sell him cheap, and wait on me for the pay, and he said he would let me have him for $15, and wait on me for the money, if I would sign a note and get my brother to go my security, and so we done that way, and my father was sitting at the tabe, starting to write the note, and he asked what date it was, and none of us knew, and James Hasty said he would look and see, and I saw him take down his valise, and he came back and said he had looked at his almanac and it was June 16th.
Q. Do you know how much he had written on the note when he asked about the date?
A. No, sir.
Q. Was there anybody present at that time except the family?
A. Nobody except the family.
Q. Had these other parties come back around the house that evening?
A. I hadn't seen them.
294 Q. Were you at work on that day?
A. I was out herding cattle on that day.
Q. Do you remember what time you got in?
A. It was after dark when I got in.
Q. You had been out herding cattle?
A. Yes, sir.
Q. Did you see any of these parties after the robbery?
A. I never seen any of them except Queen after the robbery; him and Will Dawson came over to our house.
Q. Did you ever see Barber after the robbery?
A. I seen him three or four months afterwards.
Q. If Barber was at your house after your father was arrested did you see him then?
A. Yes, sir.
Q. When was that?

A. It was about a week or ten days after my father was arrested. I was mistaken about not seeing him. I did see Kep Queen and Barber and Sam Holloway about ten days after my father was arrested.

Q. You did you see them about ten days after your father was arrested?

A. Yes, sir.

Q. Can you tell about the day of the week that your father was arrested?

A. No, sir; I don't know that I could; I think it was Tuesday or Wednesday.

Q. Well, the matter was brought to your attention when he was arrested. Can you tell how long it was after this note was written?

A. I think it was about four or five days after the note was signed; maybe a little longer.

Q. That would put it a little later than Tuesday or Wednesday if the note was signed Saturday; anyway, you are not certain when he was arrested?

A. No, sir; he was arrested soon afterwards.

Q. At the time this note was signed you say your father was at home that night?

A. Yes, sir.

Q. Where was he the night before?

A. He was at home.

Q. Was he away from home any night before that time, or any
295 night near that time?

A. No, sir; he hadn't staid away from home for two weeks when he was working at Beard's farm.

Q. How long did he stay?

A. He staid away one night when he was working up there.

Q. That was the only time?

A. Yes, sir.

Q. What sort of beard did he wear at that time?

A. Wore a long red beard.

Q. As it is now, or was it a full beard?

A. It was full, all over his face.

Q. Do you know anything about his trips to Tulsa, or where he was in the day time, or during these times along at the time this note was signed?

A. I know he was at Tulsa several times, but I don't know the days. I was herding cattle all the time. I know he went to town very often along about that time.

Q. How far did you live from town?

A. Lived about five miles; four or five miles.

Cross-examination:

The DISTRICT ATTORNEY. Now, Mr. Lewis, you are the son of the defendant?

A. Yes, sir.

Q. You are 18 years old?

A. I will be the 27th of this coming December.

Q. Is that the first note you ever signed, you and your brother.

A. Yes, sir, I think it was.

Q. Is it the last?

A. I can not say whether it will be the last or not.
Q. Have you ever signed any but this?
A. I don't believe I ever signed any note but that.
Q. That is the only note you ever signed?
A. I am not certain, but I don't think I have.
296 Q. Your father wanted to teach you business?
A. Yes, sir.
Q. He didn't make you a witness to that horse trade with him and your cousin, Queen, in order to teach you to do business?
A. We was present.
Q. He wasn't trying to teach you to do business at that time, when he traded for the stolen horses?
A. If he was, he didn't say anything about it.
Q. That wasn't the kind of business he was trying to teach you?
A. There was other parties that witnessed the trade.
Q. There was? Who was there?
A. Will Dawson and Queen.
Q. Where is Dawson?
A. I don't know.
Q. What relation is Queen to you?
A. He is a cousin.
Q. What relation is Barber?
A. He is a cousin.
Q. What relation is Van Horn, the man Queen got the horses from?
A. He is a cousin of my mother's, I guess.
Q. Where did he live?
A. I don't know.
Q. You ought to know where your cousins live?
A. I have got so many cousins.
Q. Some of your cousins are dead?
A. Yes, sir.
Q. Queen is dead?
A. Yes, sir.
Q. Barber is dead?
A. Yes, sir.
Q. Is Dawson?
A. I don't think he is dead.
Q. Now, this was the only note you ever signed?
A. I said I wasn't certain it was the only note I ever signed.
Q. It amounts to the same thing. What did you sign this note for?
A. Because it was a trade between us.
Q. If your father was trying to teach you business, why didn't you sign your own name, instead of a nick-name? Your father was teaching you to do business, and still you signed a nick-name to a note?
A. My brother signed his right name.
297 Q. Yes; but you are the chap I am talking about. Your brother signed his right name, but you didn't. Now, then, why was that?
A. Well, that was the name I always went by.
Q. Would you sign your name now "Buck Lewis?"
A. Yes, sir.
Q. Well, have you ever paid the note?

A. No, sir; I have never paid it.
Q. You will have a great deal of interest to pay?
A. Yes, sir; but father got in trouble, and the note was in the trunk all the time.
Q. He kept the note to make evidence of?
A. No, sir.
Q. How do you know he didn't?
A. I don't think he did; he didn't say anything about it.
Q. Do you know how that 16th came to be changed from the 15th?
A. It ain't changed, I don't think.
Q. Well, there is no use saying it ain't, because it is.
A. If it is, I don't know anything about it.
Q. Your father was anxious to have the right date. He called upon somebody for the date, and had Mr. Hasty go to the almanac to see?
A. He didn't have him to; he went himself.
Q. Your father wanted to get the exact date, and when he got it on paper, from that time to this he has kept that note?
A. It was in the trunk.
Q. You haven't had it?
A. No, sir.
Q. Your father is the man who wanted to know what date it was?
A. He asked what the date was.
Q. This was after night?
A. Yes, sir; it was after night.
Q. Why did you take after night to do it; why didn't you wait until the next day, Sunday?
A. We was just talking about it.
Q. Why didn't you fix it up in the daytime?
A. He was very busy.
Q. He must have been busy, going to Tulsa two days in succession.
A. He had business there.
298 Q. He wasn't at home for dinner?
A. I don't know.
Q. You was at home for dinner?
A. No, sir; I never got in until about one or two o'clock.
Q. Was he at home then?
A. No, sir.
Q. Why didn't you fix this note on the night of the 15th, the night of the robbery?
A. We never had got to talking about it as I know of.
Q. Why didn't you fix it up on the 15th, the night of the robbery?
A. Because we hadn't talked anything about the trade.
Q. Now, then, who was at your house before this robbery? There was your cousin, Kep Queen, was one?
A. Yes, sir.
Q. Who else?
A. Jim Johnson, and Jo Foster, and Sam Holloway.
Q. How many rooms had you to your house?
A. We had two.
Q. One of them your eating room and the other your sleeping room?
A. Yes, sir.

Q. Where did these men sleep?
A. In the house.
Q. These four men, six children, and your father and mother?
A. Yes, sir.
Q. How big a room was it?
A. About 16 or 18 feet.
Q. These four men, during the time they were at your house, slept in that room?
A. Yes, sir; I think so.
Q. What were they doing there?
A. Them three men, Jim Johnson, Jo Foster, and Sam Holloway, said they had come up from Texas, and said they wanted to get a job on some of the ranches; that is what they told us; I don't know what they was doing there.
Q. How long had they been there?
A. I don't know exactly how long.
Q. About how long?
A. I don't know exactly how long.
Q. About how long?
A. I can't say exactly.
Q. Three weeks?
A. I don't think they was there that long.
Q. Well, two weeks?
A. Queen had been there since March.
Q. But these other men are the ones I am talking about.
299 A. Well, I expect they had been there ten days or two weeks; I am not certain about it, because I won't swear about it.
Q. I want to know what they were doing there so long?
A. They said they wanted to get a job on some of the ranches; that is what they told us.
Q. Was they paying board?
A. They said they would pay board.
Q. Did they pay board?
A. I don't know whether they did or not.
Q. All strangers to you except Kep?
A. Well, I got acquainted with them while they was staying there.
Q. Holloman was there?
A. I didn't know him by that name; I knew him by the name of Jo Foster.
Q. You know he is the same man? Is he the same man?
A. Looks like the same man.
Q. Looks like Jo Foster?
A. Yes, sir; he looks like Jo Foster.
Q. Is he the man that went by the name of Jo Foster?
A. I think he is the same man.
Q. Well, all these men staid there ten days?
A. I can not say it was ten days; ten days or two weeks.
Q. How long had you known John Barber?
A. I don't know anything about John Barber at all.
Q. You said awhile ago that John Barber didn't come down to your house until a month after the robbery.

A. Yes, sir; but I was mistaken. He had been to our house a few times.

Q. Who with?

A. Kep Queen and Hallowau?

Q. How long did Barber stay there?

A. The first time I ever seen John Barber?

Q. Don't be so particular about the first time you ever saw him.

A. I thought I would be right.

Q. Was somebody telling you that it was important?

A. No, sir.

Q. Why are you making it of so much importance then? You said that Barber came there with Queen and Rogers about ten days after your father was arrested. How long did he stay there?

300 A. He came in the morning and left in the evening.

Q. At what time in the morning?

A. Sometime in the morning; I don't know at what time.

Q. And left at about what time?

A. Two or three o'clock in the evening. That is the last time I seen them; I guess they left.

Q. What time in the morning did they come there?

A. I don't know.

Q. Do you know what you are talking about?

A. I think I do.

Q. How do you know they came there in the morning?

A. Because I seen them.

Q. How do you know they left at two or three o'clock in the evening?

A. That is the last I seen of them.

Q. You saw them go?

A. Yes, sir.

Q. You wasn't herding cattle then?

A. No, sir; I had been to dinner.

Q. When you came home on the 15th and 16th days of June, was you at home from one to two or three o'clock?

A. I don't know whether I was or not.

Q. Were you at home that long on these days, the 15th and 16th?

A. I don't know whether I was or not; I don't know how long I was at home; it has been a good while ago.

Q. You are certain that these men came there, and that Rogers was with them?

A. I didn't know it was Rogers; I knew him as Sam Holloway.

Q. Didn't they stay all night?

A. No, sir; they never; not that time they didn't.

Q. Didn't they stay all night before that?

A. That was the first time I had ever seen John Barber.

Q. John Barber never staid there before that?

A. No, sir.

Q. Did he ever afterwards?

A. He staid there about three months after that.

Q. Who was with him then?

A. Jim Johnson and Kep Queen.

Q. That was about three months afterwards. If your brother
301 says that he staid there all night when he came down there about ten days after your father was arrested, he is mistaken, isn't he?

Mr. BARNES. I object to the question in that way.

The DISTRICT ATTORNEY. It isn't true that he staid all night?

A. I don't think he did.

Q. You say you saw them come and saw them go, and that they didn't stay all night; you are not going to change that, are you?

A. It has been a long time ago, but I don't think they staid all night; I might be mistaken.

Q. How do you know it was John Barber?

A. Kep Queen said he was.

Q. Was Jim Johnson a cousin of yours?

A. No, sir.

Q. What were they riding?

A. The last time I seen them?

Q. Yes, sir.

A. I don't know.

Q. Barber never was at your house before the robbery?

Q. And you never saw him until ten days after your father was arrested. How long after the robbery was your father arrested?

A. I think it was about three or four days after the robbery.

Q. What did you tell Mr. Barnes you thought about it?

A. I don't recollect, but I think I told him I thought it was three or four days.

Q. You said you thought it was about a week before your father was arrested that these men left?

A. Yes, sir.

Q. Your father was arrested *your* or five days after the robbery?

A. No, sir; I said three or four days.

Q. If the robbery was on Friday and your father was arrested on Tuesday or Wednesday, it would be four or five days; ain't that right?

A. I said he was arrested Tuesday or Wednesday.

Q. That would be four or five days, wouldn't it?

A. Yes, sir.

Q. And then ten days after that you saw John Barber?

A. I said I wasn't certain; I don't know how many days; I said I thought it was about ten days.

Q. That is the first time you ever saw him?

A. Saw who?

302 Q. John Barber; that was ten days after your father was arrested?

A. I don't remember whether it was ten days or not.

Q. That is the first time you ever saw him?

A. I said it was about a week or ten days.

Q. No, you didn't.

A. That is what I said.

Q. I am not trying to get you to fix the time; you have already fixed that; but that is the first time you ever saw John Barber, isn't it?

A. Yes, sir.

Q. The first time you ever saw him?

A. Yes, sir.

Q. That must have been some fourteen or fifteen days after the robbery, if you will stick to what you say?

A. That is what I am trying to do.

Q. If John Barber had been with these men, who were at your house before the robbery, you would have seen him?

A. No; I don't know as I would.

Q. You saw everybody else?

A. They said they was going up to Uncle Ike's and wanted to see John.

Q. Had you seen John?

A. I never had seen him until this time they come there.

Q. Which way did they leave when they started off?

A. To go to old man Barber's; they rode right across the creek, and I could not see them any more.

Q. It was Saturday night you signed this note; where was your father on Sunday?

A. I don't know as I remember, but I believe he was at home.

Q. Where was he Monday?

A. I think he was over at Will Dawson's. Kep Queen came over there either on Sunday or Monday and he went with him.

Q. The same day Queen came there your father went over to Dawson's?

A. Yes, sir.

Q. Do you know whether that was Sunday or Monday?

A. I think it was Monday.

Q. Do you know what he was doing at Dawson's?

303 A. I know what he said he was doing when he came home.

Q. What time did he get home?

A. He got home in the evening.

Q. Who was with him?

A. Nobody.

Q. He came home riding that gray horse?

A. I didn't see him come; he was at home when I got there.

Q. Well, he had that gray horse?

A. The horse was there.

Q. That was Monday?

A. Yes, sir.

Q. Where was he Tuesday?

A. I think Tuesday morning he went down on Bird Creek, I am not certain about it, but I think Tuesday morning he went down on Bird Creek to see about buying a place from a Cherokee woman by the name of Martin.

Q. When did he get home?

A. He never got home. He was arrested that night. We heard the next morning that he was arrested.

Q. You never saw him any more?

A. I saw him a short time afterwards in the marshal's camp.

Q. Did you go over to Dawson's on Sunday?

A. No, sir.

Q. Did you on Monday?

A. No, sir.

Q. You didn't go about there?
A. No, sir.
Q. Were these men armed when they left your place?
A. Yes, sir; they was armed.
Q. How?
A. They had guns. Some had guns and some had pistols.
Q. How many guns?
A. I am not certain, but I think they had three guns.
Q. Three guns and how many pistols?
A. I don't know how many.
Q. They had pistols?
A. I seen some pistols, but I don't know exactly how many they had.
Q. Where did they get the guns?
A. I don't know.
Q. Who went off and got the guns—Rogers, or was it Foster?
A. Didn't anybody go off and get any guns that I seen.
Q. You don't know anything about any one going away after guns?
A. No, sir.
304 Q. But they had three guns?
A. I think so.
Q. Did they carry them in their hands?
A. I don't know, but I think they had them in their scabbards.
Q. Guns are usually carried in scabbards in that country?
A. Yes, sir.
Q. Any of those guns new guns?
A. Didn't look like they was; I didn't have any of them in my hands.
Q. These men slept in the house every night?
A. Yes, sir; they slept in the house every night.
Q. All of them while they were there?
A. I think so.

Mr. BARNES. Did he say they slept in the house for a week or ten days?

The WITNESS. No, sir; I didn't say that.

The DISTRICT ATTORNEY. Of course, he won't say it now. You said you didn't know.

A. I said I didn't know exactly how long.

Q. You said you thought they were there a week or ten days, and that they slept in the house with your father and mother and the children. Where did Hasty sleep?

A. Part of the time he was on the farm.

Q. When he was there did he sleep in that room?

A. We had a porch on the south side of the house, and part of the time him and me would sleep out there.

Q. Where did you and Hasty sleep on the night of 15th?

A. I don't remember.

Q. Where did you and Hasty sleep on the night of the 16th?

A. I don't know as I remember.

Q. Don't you know where you went to bed after signing the note?

A. I think we slept on the porch, but I would not swear it. It is a long while ago, and it is pretty hard to remember.

Q. It is a good while ago and it is pretty hard to remember whether your father was at home.

A. I can remember that he was at home.

Q. Well, Barber was a cousin of your mother's, wasn't he?

A. I think he was a second cousin.

305 Q. I suppose your mother knew him?

A. She hadn't seen him for twenty years.

Q. How old was Barber?

A. I don't know.

Q. He wasn't much over 20 was he?

A. Yes, sir.

Q. You lived down in Texas and New Mexico?

A. Yes, sir.

Q. Did you know your cousin Queen down there?

A. No, sir.

Q. I suppose while your father was down there he learned to talk Spanish?

A. Yes, sir; he speaks some Spanish.

Q. Did Holloway or Holloman speak Spanish?

A. I never heard them speak any; I don't know.

Q. Did you ever hear Jim Johnson or Queen speak Spanish?

A. I don't know; I think I have heard them say a word or two in Spanish.

Q. Don't you know that Kep Queen talks Spanish; he and your father both?

A. If Kep Queen knowed any Spanish to amount to anything I never knowed it.

Q. Do you talk Spanish?

A. I know a few words.

Q. Where did you learn it?

A. When I was in New Mexico.

Q. Where did your mother come from?

A. She was raised in Texas.

Q. The Dawsons were raised in Texas?

A. Some of them were.

Q. They lived down on the Staken Plains?

A. I guess so.

Q. Queen is kin to the Dawsons?

A. He is kin to them.

Q. Where did he come from?

A. He come from Williamson County, Texas.

Q. Down near the Rio Grande?

A. I don't know; I think it is; I never was in that part of Texas.

Q. Now, then, when did Queen first come to your house?

A. He was there when we come to the Indian country.

Q. When did you go to the Indian country?

A. We come in the fall.

Q. What year?

A. Four year' ago; 1887, I think it was; I know we have been there four years this fall.

Q. Where did you come from?

A. Come from Monahan, Texas.
Q. What county is that?
A. It was in Tom Green County then, but the county has been cut up and it is in a different county now.
306 Q. You say it was 1887 when you came there?
A. I said about four years.
Q. That would be 1887. You are sure that it has been four years this fall since you come there?
A. Yes, sir.
Q. Are you sure it has been that long?
A. Yes, sir; I am certain it has been.
Q. You are certain it isn't longer?
A. I don't think it is any longer.
Q. You had been in the Indian country about six months when this robbery occurred. The robbery occurred in 1888, and you came there in the fall of 1887, and you had been there seven or eight months!
A. I don't know how long.
Q When did the robbery occur?
A. Occurred in June.
Q. What year?
A. 1888.
Q. From October or November, 1888, to June, 1888, is how long?
A. I guess we had been there about six months; I am not certain about that.
Q. Then if that is the case, there is nobody who lived in the Indian country who could have known your father in the Indian country for three or four years before this robbery?
A. There might have been a few in Texas.
Q. You didn't go to people's houses, and go and take dinner at Red Fork?
A. Yes, sir; we was pretty well acquainted there.
Q. You wasn't acquainted before you went there?
A. No, sir; we got acquainted with some of them after we got there. We was acquainted with some of our cousins.
Q. Were they Indians?
A. No, sir.
Q. Liza Cox ain't your cousin?
A. No, sir.
Q. When you came to the Indian country to what place did you first go?
A. To my grandfather's—Riley Dawson's.
Q. How long did you stay there?
A. We didn't stay there but a short ti'e; I don't know how long.
307 Q. A month or two?
A. No, sir; not that long.
Q. A week?
A. I guess so.
Q. Then where did you go?
A. About a mile from his place.
Q. How long did you stay there?
A. I guess we stayed there about a month.

Q. Then where did you go?
A. We moved over on Coal Creek.
Q. To your present place?
A. No, sir; but within a few hundred yards of it. When we first went over on Coal Creek we went on Jack Johnson's place.
Q. How long did you stay there?
A. We staid there until along about the first of March.
Q. How long would that make it?
A. I don't know exactly when we moved there.
Q. Two or three months?
A. We staid there, I think, two or three months.
Q. Then where did you go?
A. We moved up to my cousin's place, Wilbur Dawson's.
Q. How long did you stay there?
A. We staid there until about the 4th of July.
Q. Then you was there when the robbery occurred?
A. Yes, sir.
(Witness excused.)

308 M. B. BAIRD, being called and sworn on behalf of defendant, testified as follows:

Examined by THOS. H. BARNES, Esq.:

Q. State your name to the jury.
A. Melville B. Baird.
Q. Where do you live?
A. At present, Tulsa, Indian Territory, Creek Nation.
Q. You used to live here, I believe?
A. Yes, sir.
Q. How long have you been living up there?
A. I have been there seven years.
Q. Are you a citizen of that country by marriage?
A. I am a citizen of the Cherokee Nation by marriage.
Q. Tulsa is right close to the line of the Cherokee Nation?
A. Yes, sir; about a quarter across the line.
Q. Have you a farm across the line in the Cherokee Nation?
A. Yes, sir.
Q. I will ask you if the defendant here ever worked for you on that farm, helping open it up, and if so, when?
A. He was about the first man I employed on the opening of the farm. I bought out a number of claims and hired Mr. Lewis to help make fence for me, and he worked for me one spring and summer making fence and breaking prairie. I think, probably, it was about the first of July when he quit.
Q. When was he arrested?
A. He was arrested some time in June.
Q. Did he have the work carried on any after he was arrested?
A. Yes, sir; I think there was some work done after he was arrested?
Q. Anyway, it was in the spring and summer of 1888 that he worked at this fence and opening up this land for you?
A. Yes, sir.

Q. Do you remember about the time it is claimed this traun was robbed and a man killed down near Gibson Station, on the Verdigris River?

A. Yes, sir.

Q. Before we come to that I will ask you one or two other ques-
309 tions. Do you know whether Mr. Lewis had to get any teams and whether you furnished him any money at any time when he was breaking land for you.

A. I know I let him have one hundred dollars early in the spring, which he said he wanted to use to buy a heavier temam with. He said his teams were too light to break prairie with. I don't know whether he got any other team or not.

Q. Do you remember letting him have money at any other time?

A. Yes, sir; I let him have money whenever his work called for it along at a number of times. When he come in and wanted money I would let him have it.

Q. How far did you live from him?

A. I lived in Tulsa?

Q. How far from the farm you was opening to where he lived?

A. About two miles and a half from my headquarters place to where he lived.

Q. Where was he working?

A. Well, he was working in the bottom, and it would be further off.

Q. How far did he live from Tulsa?

A. About four and a half or five miles.

Q. Do you know a man by the name of James Hasty?

A. Yes, sir.

Q. Do you know what his reputation in the country where he lives up there is for truth—what the people think of him; not what you think of him, but how he is generally spoken of there as to his character for truth in the community?

A. Well, it isn't very good.

Q. Are you acquainted with his character, as to what people think of him?

A. Yes, sir.

Q. Is that character good or bad?

A. It is bad.

Q. It is claimed here that you had some little difficulty with Mr. Hasty here last court out in the hall, and that you tried to intimidate him as a witness in the case?

A. I din't want to do that. I don't think I was doing it. He commenced talking to me. I know hardly what I said.

Q. Was you a little drunk?

A. Yes, sir; I was a little off. I don't hardly know what I did say to him.

Q. What you said, however, wasn't to intimidate him as a wit-
310 ness in the case?

A. No, sir.

Q. And that doesn't have anything to do with what you say of his character—didn't influence you?

A. Not in the least.

Q. Now, Mr. Baird, it is alleged here that this train robbery and murder occurred upon the 15th day of June, 1888. Now, if you know where Mr. Lewis was upon the 15th day of June, 1888, if there is any way by which you could fix it, just state it.

A. Mr. Lewis came to my place to see how his accounts stood. He was working for me at the time. We looked over the account. It was sometime in the afternoon that he came there. I thought nothing about it at the time, and would not have remembered it, because I made no record of it on my book, only from the fact that the next morning after this we heard of the robbery on the M., K. and T. at the Verdigris bridge, and the next morning I took the train to go around on the same road to take up some logs at Leliaetta. We heard of the robbery in the morning before I left, and then I was down there probably two or three days; I don't remember how long.

Q. Down where?

A. I was at Leliaetta and Muscogee, and then I came back, and on my way back I met Mr. Leflore and several others, who were going down there, thinking the robbers were in that neighborhood; and I don't know whether Mr. Lewis had been arrested at that time or not, but they claimed he was implicated in it, and I remembered distinctly of his being in the office the day before I left home, and I knew he was there, and I heard of the robbery the next morning after he was there.

Q. By that, then, and by hearing of this, your attention was drawn to this matter?

A. Yes, sir.

Q. And it was but a short time afterwards?

A. Yes, sir.

Q. Do you remember where you spent Sunday?

A. I think a part of Sunday I spent in Fort Gibson, and the balance in Muscogee.

Q. You say you would not have remembered of this being the 15th if your attention had not been called to it in the manner you have mentioned, as you kept no record of it?

A. No, sir; I have no record of it.

311 Q. Which day was it, the 15th or 16th?

A. Well, taking the circumstances, I think it was the 15th, but I have no records of it of course.

Q. The next day after he was in your office you went away, did you?

A. Yes, sir.

Q. And then did you hear of the robbery that day?

A. Yes, sir; that morning before I left home.

Q. How did you hear of it?

A. By wire.

Q. When did you hear it had occurred?

A. The night before.

Q. Now, you know that on the day before you heard of this robbery by wire that this man was in your office?

A. Yes, sir.

Q. You left that day after you heard of this that morning?

A. Yes, sir.

Q. And you Sundayed away from home?

A. Yes, sir.

Q. And then when your attention was called to this matter of Lewis being charged with being in the occurrence your attention was called to where Lewis was on the 15th?

A. Yes, sir.

Q. How late was it on that day when Mr. Lewis was in your office?

A. It was in the afternoon of the day, and I had had a settlement with a merchant there who came first.

Q. What was his name?

A. Bynum.

Q. Did you do a considerable business then?

A. Yes, sir; I was doing a business of about 130,000 dollars a year.

Q. Was he your banker?

A. Yes, sir.

Q. You had no banks there?

A. No, sir.

Q. You had all your settlements with him?

A. Yes, sir.

Q. Can you remember the time of day that you closed your settlement with him?

A. No, sir; I didn't remember of his being there; he called my attention to it; he said he didn't see Mr. Lewis there, and he said Mr. Lewis must have been there later than he was.

Q. You was telling him about it?

A. I asked Mr. Bynum whether Mr. Lewis came in before he left, and he said he didn't.

Q. You know that it was on the same day that you had the
312 settlement with Bynum that Lewis was there?

A. Yes, sir.

Q. Now, can you remember about what time in the afternoon Lewis was in your office?

A. Well, I didn't usually get to my office until about one o'clock, or possibly a little after that, and the business that I was doing with Mr. Bynum would last an hour, and it was after that. It was possibly half past two o'clock when Mr. Lewis was in there, but I don't think he staid there long.

Q. Did you see Mr. Lewis the day before that?

A. Mr. Lewis was in the office a short time before that, and I told him to call later; I think it was the day before, but it might have been two days before; I think it was the day before though.

Cross-examination:

The DISTRICT ATTORNEY. Now, Mr. Baird, you had a pretty large business with Mr. Bynum?

A. Yes, sir.

Q. Very well, then, your books ought to be able to show the settlement with Bynum; doing a business of 150,000 a year you have some memoranda of it. Have you looked it up?

A. No, sir; I wasn't asked to look it up.

Q. You knew that you was going to swear on this matter; you was here, and had a fight with one of these witnesses. How long have you been subpœnaed, sir?

A. I don't know; ever since this case started.

Q. I suppose you have tried to inform yourself so that you could give an intelligent answer to the questions that were asked?

A. No, sir.

Q. Why haven't you? Are you afraid your books will tell a different story?

A. No, sir.

Q. Very well, sir; if you had that big settlement with Bynum your books will show what day it was. Why haven't you looked at your books?

A. I wasn't asked to.

Q. Have you looked at your books?

A. No, sir; I haven't.

Q. Why haven't you?

A. I wasn't asked to.

Q. How do you know that it was the 15th that you had these transactions?

313 A. My attention was called to this matter, Mr. Clayton, right immediately after that; I never did look at the books; I didn't think it was necessary.

Q. You have the means in your power by which you could fix this thing exactly; by looking at your books you could have fixed the date of the transaction with Bynum. You still have the books?

A. Yes, sir.

Q. Your books would tell?

A. I don't know whether they would or not. He came in to see what his account was, and rendered me a statement.

Q. And you haven't examined your books to ascertain definitely how it is?

A. I don't know that my books would show anything that transpired on that day.

Q. Do you say that they would not show your settlement?

A. I didn't say I had a settlement with him.

Q. That is your very language?

A. Well, possibly that may be, too.

Q. Well, Mr. Bynum rendered you a statement?

A. Yes, sir.

Q. That certainly has a date?

A. I expect I could find that statement.

Q. It has a date to it?

A. Yes, sir.

Q. Certain that would show a date?

A. Yes, sir.

Q. You are a very extensive; have in your power the means of ascertaining whether your neighbor and your friend is guilty of the crime of murder or not; have been subpoenaed here as a witness for the purpose of proving that very fact, for at least six months, and never have looked in your books. Do you want anybody to believe you didn't look in your books because you was afraid to; because you was afraid you would find the date that was different from what you wanted to swear to?

A. What did you ask me?

Q. I will put another question to you. You said that this man made to you a statement upon that day, and that you were engaged in a settlement with him that lasted about an hour?

A. I said he may have made a statement.

Q. No, sir; you said he did make a statement. It is your language that I am using. You said that this man made a statement to
314 you, and that it took you an hour to settle the business that you had with this man, your banker, upon that day. Now, then, if he made a statement to you that bears date, and if he made a statement to you, you figured and you had a settlement. So that statement and your books must both necessarily show the date. Now, I will ask you again, with that knowledge in your possession, after having been subpoenaed for at least six months, knowing that you were coming down here to prove an alibi, why didn't you go to that source of information, your books, and prepare yourself to make some kind of an intelligent statement before you came before the jury?

A. I asked Mr. Barnes whether it was necessary to bring my books down, and he said it wasn't.

Q. Then you thought about your books, if you asked if it was necessary to bring them down. Why didn't you go to your books and inform yourself? You see you are only jumping out of the frying pan into the fire; you admit that you thought about your books, and that you asked Col. Barnes if it was necessary to bring them down. Now, with this knowledge in your possession, and thinking about your books, and asking Col. Barnes if it was necessary to bring them down, why didn't you look at them in order to inform yourself? Now, I am going to wait until I get an answer—that is, if I don't have to wait too long.

The COURT (to witness). Go on and answer the question.

The WITNESS. There was no question about the date.

The DISTRICT ATTORNEY. If there was no question about the date, why did you ask if it was necessary to bring your books down to show this date if there was no question about it?

A. I am no attorney.

Q. You are no attorney, but you some how or other got it into your mind that it was necessary to have these books, and the only thing that the books could show was the date?

A. That is all.

Q. Then the date was in question. Did Col. Barnes tell you to look at your books and see?

A. I don't know whether he did or not.

Q. Of course that would be the first thing Barnes would say: Look at the books, and if it gives the right date bring them down, and if
315 the date ain't right don't bring them. Ain't that it?

A. No, sir.

Q. Then why is it you asked Mr. Barnes if it was necessary to bring the books down? You must have had the dates in your mind.

A. I didn't know whether there was any record there. I don't think there was of the settlement with Mr. Lewis.

Q. But you had a settlement with the other man, and that was the same day that Lewis was there, and that settlement would unquestionably

fix the date, and there would be no question about it, unless the books were altered and changed. When was it you asked Col. Barnes if it was necessary to bring your books?

A. I could not tell you; I have not seen Mr. Barnes since the last term of court.

Q. Then it must have been at the last term of court or before?

A. Yes, sir.

Q. I would like to get a peep at those books. Now, you want your testimony to go in this way, do you: That you and Mr. Barnes had a talk about these books, and you asked him if you must bring your books down, and he told you it wasn't necessary, and you have never looked into your books to see the date of the transactions had between you and Mr. Bynum, or the date of the statement that he filed with you, and you never brought your books down because Barnes said it wasn't necessary?

A. There are two or three sets of books.

Q. Have you got Bynum's statement here?

A. No, sir.

Q. You said whether it was the 15th or 16th day of June he was in there you could not tell?

A. No, sir.

Q. And it was after Mr. Barnes pressed you, that you thought it was the 15th from circumstances? But then, you said whether it was the 15th or 16th, you didn't know.

A. It was the day before the robbery, that I know, from the fact that I took the train the next day, and went right over the ground where the robbery was committed.

Q. You are not answering my question at all.

316 A. What is the question?

Q. You see you forget my questions. Where did you go to?

A. I went to Vinita, and from there to Lelieatta.

Q. What time did you get to Vinita?

A. I got there about one o'clock; maybe a little after one.

Q. What time did you leave Vinita?

A. I staid there until nearly dark, and then went south.

Q. What road did you go on?

A. M. K. & T.

Q. To where?

A. Lelieatta.

Q. You went to Lelietta that night?

A. Yes, sir.

Q. Where is Lelietta?

A. It is 35 or 40 miles south of Vinita.

Q. What did you go there for?

A. To take up some logs.

Q. Did you get them?

A. Yes, sir.

Q. When?

A. They wasn't shipped until a few days afterwards.

Q. Did you take up the logs that night, or the next day?

A. I run over them the next day.

Q. Then where did you go?

A. I went to Muscogee. I stopped awhile at Gibson Station.
Q. When did you leave Lelietta to go to Muscogee?
A. The next morning.
Q. What time did you get to Lelietta?
A. About 8 o'clock at night.
Q. How long did you stay there?
A. I was there until 8 or 9 o'clock the next morning.
Q. Then where did you go?
A. Then I went to Muscogee.
Q. What time did you get there?
A. Well, I can't tell you any more what time it was.
Q. About what time?
A. It was probably 11 or 12 o'clock.
Q. So you took up these logs on Sunday, did you?
A. No, sir; I just run over them.
Q. It was on Sunday, was it, that you run over these logs?
A. I can't tell you the day of the week.
317 Q. On what day were you at Lelietta—Sunday, or Monday, or Tuesday, or Friday, or Saturday?
A. I can't tell you.
Q. Why?
A. It is pretty hard to tell when Sunday comes up there in those places.
Q. It is not very hard to tell when the 15th of June comes, but what I want to know is what day you were at Lelietta. What night did you get to Lelietta?
A. It was Friday or Saturday night.
Q. What day were you at Lelietta?
A. It must have been the next day *day* after I arrived there.
Q. You certainly know where you were Sunday?
A. I think I was there Saturday; it must have been Friday or Saturday; I might have spent two days going down there; I spent part of the day at Muscogee, and I transacted no business on Sunday.
Q. You spent two days in going down to Lelietta?
A. I said I might have spent two.
Q. Now, let's see if you did. It is mighty easy to trace this thing up; there are some things you can remember very well. What time in the day did you leave Tulsa?
A. About 11 o'clock.
Q. Where did you go to that day and stay all night?
A. I went to Vinita.
Q. I asked you where you went to and staid all night?
A. Lelietta.
Q. That didn't take you two days then?
A. I said from Lelietta to Muscogee. I had logs scattered all along there.
Q. And got there about ten o'clock that night?
A. I think earlier than that.
Q. And then you staid there about a day?
A. I left there that morning.
Q. Where did you stay that night?

A. I was at Muscogee. I may have staid at Gibson; I don't know.

Q. Did you go to Gibson?

A. I don't know.

Q. If you staid at Gibson one night, you were two days going from Lelietta to Muscogee?

A. I don't know how that was.

318 Q. You have got such a good recollection that it is not necessary to bring your books along to fix the 15th of June, three years ago, but when I come to fixing where you were on a certain trip that you took at the same time your memory seems to be faulty. I am talking about a certain trip that you made, and if you can't tell where you went and staid all night, I wouldn't give much for your memory when it comes to fixing a date that your books will tell the truth about it. You left Tulsa, and went to Lelietta, and staid there until ten o'clock the next day. You have got that down pretty fine?

A. I said nine or ten o'clock.

Q. Nine or ten o'clock the next day you left there. Now you ought to tell me where you went that day, and where you stopped that night?

A. I have made that trip over 30 times.

Q. I don't care what you did.

A. I had camps all along the road. I don't remember where I did stay.

Q. At Muscogee?

A. Yes, sir; before I came back.

Q. Did you go to Muscogee that day?

A. I think I did.

Q. Then you think it is not true that you were two days going to Muscogee?

A. I might have taken two days on the way? I might have staid at Gibson, or at Wagonner.

Q. Now, in going down to Muscogee, did you run right down, or did you take the whole day?

A. I just can't tell you. I know that I came back on Tuesday of the next week, or Wednesday.

Q. Then your trip doesn't give you any knowledge of what day that was?

A. That is all right.

Q. You told where you spent Sunday, but you don't know how many days you was in getting there, and if you can't tell, that of course isn't anything towards fixing the time?

A. I know when I started.

Q. Oh, no; you don't know when you started. What day of the month was it?

A. Well, as I told you before, it was the next day after the robbery.

Q. I want to see if you are right about that. Now you say that you started the day after the robbery, and that you spent Sunday in

319 Muscogee, and yet you don't know how many days you was in getting there. What day of the week was it when you left home?

A. I think it was Friday morning; possibly Saturday morning; it was the last of the week, I know that.

Q. You think you left home on Friday morning?

A. It might have been Saturday.

Q. You say 't might have been Saturday, but you think it was Friday. You think you left home on Friday; don't go to counting up from the time of the robbery. If the robbery occurred on Friday evening and you left home Friday morning, you didn't hear of the robbery before you started. That is a self-evident truth.

A. It is an absolute fact that I heard of the robbery before I started.

Q. It is an absolute fact that you haven't got your books down here, too. Why did you hesitate when Mr. Barnes asked you if you knew the character of the man that you had had a fight with?

A. I didn't like to tell what the man's character was.

Q. When you asked about your fight, you showed a very great pleasure in telling it?

A. I don't think I did.

Q. Didn't you threaten to kill him?

A. No, sir.

Q. Didn't you draw your knife on him?

A. No, sir.

Q. What sort of a fight did you have?

A. It wasn't any fight.

Q. You didn't draw your knife on him?

A. No, sir.

Q. How do you know you didn't; you was drunk, and you didn't know wha' you said to him?

A. I never drew a knife on a man in my life.

Q. Were you and he friends up to that time?

A. No, sir; he had worked for me awhile, but I never had any trouble with him.

Q. Why were you not friends?

A. Because I didn't care to associate with that kind of a man, I guess.

Q. When did it first occur to you that you didn't care to associate with him—before you got drunk or after you got drunk?

320 A. I never associated with him at all.

Q. Why wasn't you friendly with him?

A. Because he was very disreputable.

Q. He was sober and you were drunk. The disreputable man was sober and the reputable man was drunk, and he commenced the quarrel?

A. Yes, sir; he called me over to him and commenced cussing to me.

Q. What did you go over to him when he called you?

A. I think that is where I made the mistake.

Q. Pretty near as big a mistake as in not bringing your books here?

A. I was not interested in the books.

Q. Mr. Baird, on your oath, have you not looked at those books in regard to these dates?

A. No, sir; I have not.

Q. On your oath, why haven't you?

A. I don't know; I have been very busy, and if I was to go back there now I wouldn't look at the books.

Q. Why didn't you look at them?

A. Well, my books are not there where I stay, and then a number of them have been burned.

Q. I have got your solemn oath on that. You said if that statement was made it would show the date, and that you thought you could get the statement, and you said your books would show it, and I am not going to let you get them burned now, because I have your oath that the books would show it, provided this thing occurred. Would you transact an hour's business with your banker and not keep a record of it?

A. It is owing to what it would be; we might be talking about business matters generally.

Q. Well, when was it you let Lewis have that two hundred dollars? I suppose your books would show that?

A. It was one hundred dollars. It was some time in the spring; about the time he commenced breaking prairie.

Q. March?

A. If it was March it was along about the latter part.

Q. He told you then he could get some horses?

A. Yes, sir.

Q. That was the latter part of March, and if those horses that he got were not stolen until April, of course he never got those with that money.

321 A. I don't know whether he bought horses or not; I never saw them.

Q. Did he tell you who he could get the horses from?

A. I don't remember that.

Q. Only that he knew where he could get the horses?

A. Yes, sir; I think the conversation was sometime like that; he wanted to get some horses, and I let him have the money.

Q. If the horses were running on the range at that time, you didn't know it?

A. No, sir.

Q. Nor whose horses they were?

A. No, sir.

Q. Your books would show that transaction?

A. Yes, sir; they would show the money transaction—whenever I paid him money.

Q. Now you say you saw some parties looking for these robbers?

A. Yes, sir; I let Mr. Leflore and Mr. Thomas and Mr. Kenney have some horses to look for them.

Q. Where was that?

A. That was in Tulsa.

Q. Was that before or after defendant was arrested?

A. That was on my trip home.

Q. Was it before or after he was arrested?

A. I think he was arrested at the time. I think this was about Tuesday or Wednesday of the next week.

Mr. BARNES. You mean of the next week after the robbery?

A. Yes, sir.

Mr. CLAYTON. And the defendant was arrested at that time, was he?

A. I don't remember; I think he was.

Q. When did you ask Bynum if Lewis was in your office on that day?

A. I don't know; we just simply talked the matter over.
Q. How long afterwards?
A. I don't know; I think we talked it over about two months ago.
Q. Was it a year afterwards when you talked to him about it?
A. I think I talked to him about it a short time afterwards.
Q. Your memory seems to be very treacherous about somethings?
322 A. No, sir; I don't want it to be that way.
Q. How long after this was it that you was talking to Mr. Bynum, a'd he told you that Mr. Lewis wasn't there?
A. It was a short time.
Q. A short time is a relative term. Tell me what you mean by a short time—a few months?
A. I don't think it could have been over two or three months from the time Mr. Bynum and I talked about it.
Q. Is Bynum here?
A. No, sir; he is not here.
Q. Where was it you talked about it?
A. That I can't tell you; probably it was either in his store or in my office.
Q. When you saw Leflore and Thomas and gave them your horses, did you mention to them that Lewis had been in your store that day?
A. I don't know; I sent a boy out after the horses.
Q. I don't care who you sent after the horses.
A. I don't know whether I said anything about it to them or not.
Q. Why would you not tell them about it?
A. I really didn't know that Mr. Lewis was arrested.
Q. Did you tell them that they had the wrong man?
A. I told Charlie Leflore last winter when he arrested Mr. Lewis the second time. I don't know that I saw Mr. Leflore from the time Mr. Lewis was first arrested until last winter at Muscogee.
Q. Where was it you saw Mr. Leflore?
A. At some place in Muscogee.
Q. Did he have the defendant with him?
A. No, sir; he had just brought Lewis down here, and was on his way home.
Q. Were you sober when you was talking to Leflore?
A. A man generally is in that country.
Q. It was at Muscogee that you told Charlie this?
A. Yes, sir.
Q. Did you go to the camp where Lewis was when he was arrested the first time?
A. No, sir; I was compelled to go to Kansas; I had some stuff up there I had to ship.
Q. What time did you start to Kansas?
A. I don't remember.
Q. You can not tell that?
A. No, sir.
323 Q. What was your business at this time?
A. I was exporting walnut logs and lumber and opening a farm.
Q. Doing a very large business?

A. Well, not so very large; not as much as I had done.

Q. Well, I understood you to say you was doing one hundred and fifty thousand dollars worth?

A. I said one hundred and thirty thousand.

Q. Had a good many men employed, of course?

A. Yes, sir.

Q. How many men?

A. Well, not so very many that worked directly under me. I let contracts.

Q. How many men directly under you, on the farm and in the log business.

A. There was probably six or eight or ten on the farm.

Q. How many in the log business?

A. I don't remember; I had no body except a bookkeeper, and some contractors.

Q. How many contractors?

A. I can't tell you.

Q. Who was furnishing you the money, and who was you getting the logs for?

A. Well, there was really nobody. I would ship myself as fast as I got them out, and would make my drafts with bills of lading attached.

Q. Mr. Bynum was your banker?

A. No, sir; I had a bank account in Saint Louis.

Q. Mr. Bynum would come to your office to do business, and he was there on that day?

A. Yes, sir he was; or at least I think he was.

Q. What do you mean by that? What do you mean by saying "at least I think he was?"

A. At least he told me so.

Q. You seem to have some doubts about his being there Wouldn't you remember of this banker being there as well as you would a poor devil who was working on your farm?

A. It is all owing to the circumstances. I remember these circumstances.

Q. Did you make much money out of the log business?

A. No, sir.

Q. Busted you, didn't it?

A. Pretty near it.

Q. You didn't get rich, did you?

A. No, sir.

Q. I didn't want you to come down here posing before the jury as a rich man unless you are.

324 Redirect examination:

Mr. BARNES. Now, in regard to this matter about the books, I want to ask you a question. You said you had asked me if it was necessary to bring the books down here to show the date. You told me at the same time, did you not, the same as your testimony indicates, that you made no entries upon the books in regard to the transactions between you and Mr. Lewis?

A. Yes, sir.

Q. And you say that you don't know whether you made any entry of the transactions with Mr. Bynum, but I asked you if your books showed any transaction between you and Mr. Lewis, and you said they did not.

A. Yes, sir.

Mr. CLAYTON. He said he didn't know.

Mr. BARNES. I don't think that is the testimony. (To witness.) You say now you made no entries as to what occurred between you and Mr. Lewis on that day?

A. I think there is no entries made.

Q. Any how, whether it is your fault or mine, when you told me that then I told you it wasn't necessary to bring the books. Now then, we will just let that go that way, and I guess that is about the way of it.

Q. Well, you left there on that day about 11 o'clock, and the dispatch had come that morning about the matter?

A. Yes, sir.

Q. Where did you have to go to in order to get to where you went?

A. I had to go to Vinita.

Q. How long did you lay there?

A. We laid there until we caught the southern train.

Q. Do you remember anything about Tom Claywell being taken off on the train that day?

A. I remember of Tom Claywell being arrested about that time, but whether he was taken on that train that day I don't know.

Q. Do you know whether Mr. Halsell went off on the train that day or not?

A. No sir, I don't.

Q. How many trains was running then?

A. We had one train a day each way, and the train left for Vinita from Ulsa between ten and eleven.

325 Q. Now, then, do you know the distance across the country from Tulsa to the bridge?

A. Well, if a man could ride right straight through he possibly could make it in 55 miles, but he would have to know the road.

Q. What is it called across the country from Tulsa to Muscogee?

A. We call it 65 miles.

Q. How much nearer is it from Tulsa to the bridge than from Tulsa to Muscogee?

A. Well, it is a little over five miles, I guess. I guess it is possibly 57 or 58 miles, and maybe 60 miles, from Tulsa across the country to the bridge.

Recross-examination:

The DISTRICT ATTORNEY. What dispatch did you say that was that came there?

A. It was a dispatch.

Q. What did you say about Tom Claywell?

A. I don't know anything about that; I knew of his being arrested.

Q. Was he arrested before or after the time you made this trip?

A. He wanted me to go on his bond afterwards.

Q. How long afterwards?

A. I don't know.

Q. Did you hear of his being arrested before or after you went down on this trip?

A. I could not tell you.

Q. Did you see Jim Crutchfield and Mr. Halsell the day you left?

A. No, I don't believe I did.

Q. You don't know whether Claywell was arrested before or after you left?

A. No, sir; I don't know anything about it. He was arrested; of course I know that.

Q. When did you see Claywell, before or after you went down to Muscogee?

A. I think it was after.

Q. Where was he when you saw him?

A. He came to my office and wanted me to go on his bond.

Q. Was he under arrest?

A. He was under arrest then, I think.

Q. Was a marshal with him?

A. I don't know; I know of him coming there and wanting me to go on his bond.

(Witness excused.)

326 ANDREW HINSON, being called on the part of the defendant, testified as follows, to wit:

Mr. BARNES. What is your name?

A. Andrew Hinson.

Q. Where do you live?

A. I live in Cooweescoowee district.

Q. How near do you live to Tulsa?

A. About 12 miles.

Q. Raised up there?

A. No, sir.

Q. How long have you lived there?

A. Ten years.

Q. Does your mother live there?

A. Yes, sir.

Q. How far from Tulsa?

A. I live ten miles, I guess; ten or twelve.

Q. At the time it is claimed that the train was robbed down near the Verdigris bridge, near Gibson Station, where was you living then?

A. I was living on the Baird farm it is called now. It is about seven miles from Tulsa.

Q. Who was you living with then?

A. My mother.

Q. How far did you live from this defendant?

A. About three miles, I guess.

Q. Do you know about the time it is claimed that train was robbed?

A. Yes, sir; about the time.

Q. Now, in reference to that time, I will ask you if you saw the defendant; and, if so, if there is any particular dates that you can remember when you saw him; just go on and tell about it, and how you fix it, and all about it?

A. Well, it was on Thursday; he was at my house about ten or eleven o'clock.

Q. What occurred there to make you remember that?

A. Well, my mother was out in the garden picking beans, and she asked him to stay to dinner, and he said he could not stay; he had to
327 go to town that evening, and that was the last I saw of him; he got on his horse and went off.

Q. This was Thursday?

A. Yes, sir.

Q. And your mother invited him to stay and take dinner, because she was going to have beans for dinner?

A. Yes, sir.

Q. Now then did you see him after that in Tulsa anywhere, and if so, how soon after that?

A. I saw him in Tulsa about the middle of the evening.

Q. What occurred to make you remember that?

A. This man Baird was owing him at the time, and he went to his office to see if he could get some money.

Q. What day was that?

A. That was the next day after Thursday.

Q. That was Friday?

A. Yes, sir.

Q. Where did your see Lewis?

A. I went to Baird's office, and he was there.

Q. Now then, did anything occur between you and Lewis that day?

A. I met him on the stairs, and he turned around and said he would have to go back and see about someting, I don't remember what it was.

Q. Now then, where did you go that day, and where did you go the next day after seeing him?

A. Well, that evening I went on to my uncle's, out in the Osage Nation.

Q. What is his name?

A. Warren Harlow.

Q. Did anybody go with you?

A. No, sir.

Q. How far does Warren Harlow live from Tulsa?

A. He lived about two and a half miles, or three.

Q. Does the Osage line come up close to Tulsa?

A. Yes, sir.

328 Q. You went from Tulsa on Friday evening to your uncle's?

A. Yes, sir.

Q. What did you go there for?

A. Well, he wanted me to go with his woman to the Osage payment; it was to come off on the nineteenth of June.

Q. What did you do?

A. I went there and staid all night, and then the next day we started.

Q. Where did you stay Sunday night?

A. I staid at John Jaywards.

Q. When did you get to the place of the payment?

A. We got there Monday.

Q. When did you leave there?

A. We left the same evening.

Q. You said the payment was on Tuesday, the nineteenth. What time did you get to the payment?

A. I got there on Monday.

Q. The payment was on both days?

A. It was on Monday the 18th, as well as Tuesday the 19th.

Mr. CLAYTON. He has never said that.

Mr. BARNES. Whatever day you got there, the payment was going on. They said it was to be the 19th, and you got there on Monday, and was going on?

A. Yes, sir.

Q. Then it was going on before the 19th?

A. No, it commenced that morning.

Q. You are taking Monday for the 19th, are you?

A. She said the payment was to be the 19th.

Q. And you got there on Monday?

A. Yes, sir.

Q. And the payment was going on?

A. Yes, sir.

329 Q. Did she get anything?

A. Yes, sir.

Q. And you left there the same day?

A. Yes, sir. I come on back a few miles, and staid all night.

Q. She told you this payment was to be on the 19th?

A. Yes, sir.

Q. And you went there, and when did you get back?

A. We got back to her house on Tuesday.

Q. You went over to your uncle's on Friday evening and staid there Saturday, and then Sunday you started with his wife to this payment?

A. Yes, sir.

Q. And you staid all night Sunday night on the way, and you understood the payment was to be on the 19th; but any way, when you got there the payment was going on.

A. Yes, sir.

Q. Then where did you stay Monday night?

A. We camped out Monday night.

Q. Where did you go Tuesday?

A. We come home.

Q. Where did you go Wednesday?

A. I went to Tulsa.

Q. Do you know when you heard of the robbery?

A. Yes, sir; as quick as I got home on Wednesday.

Cross-examination:

The DISTRICT ATTORNEY. You know it was on Thursday that he was at your house, because your mother asked him to stay and eat beans with you?

A. Yes, sir.

Q. You never ate beans except on Thursday?

A. We had beans all the time when we have got them, and when we haven't got them we don't eat them.

Q. I don't think you have them very often, from your looks?

A. Not very.

330 Q. Then you fix Thursday that he was at your house because you had beans for dinner, and you fix these other dates from Thursday?

A. Yes, sir.

Q. That's a good way. You know the other dates from that. You know that the day you ate beans was Thursday, and the next day was Friday, and the next day was Saturday, and the next day was Sunday, and the next day was Monday, and the next day was Tuesday—counting from Thursday.

A. Yes, sir.

Q. You know that was Thursday because you had beans; but you say you had beans nearly every day?

A. We had beans all along, but that man was there and my mother asked him to *saty* and eat beans.

Q. And that is the reason you know it was Thursday? And that was three and a half years ago. That is a mighty good way to fix it. Now, pay-day was on the 19th?

A. Yes, sir.

Q. That was when the payment was to commence?

A. She said it was.

Q. Didn't Mr. Baird tell you it was the 19th?

A. No, sir.

Q. Did you get there the second day of the payment or the day it commenced?

A. It was going on when I got there. It had been going on a day.

Q. I guess not, because the day before you got there was Sunday. If it had been going on a day when you got there, you got there on Tuesday, and that was the 19th.

(No response.)

Q. Then it must have been the 19th that you got there?

A. I told you that she said it began on the 19th.

Q. Then Monday must have been the 19th. Did you have any pork with your beans?

A. Yes, sir; sometimes.

Q. Where did you get your pork—out of the woods?

331 A. Sometimes.

Q. Where did you come from. I want to get your pedigree Is your mother alive?

A. Yes, sir; if she ain't died since I come here.

Q. Is your father alive?

A. No, sir.

Q. Where did you come from?

A. North Carolina here.

Q. From North Carolina directly here?

A. I come from North Carolina here.

Q. Did you go to Texas?

A. No, sir.

Q. What did you leave North Carolina for?

A. Because my folks all emigrated, I guess.

Q. Come along with the balance of them?

A. Yes, sir.

Q. Now, honest 'injun', what did you come for? You didn't change your name when you got here?

A. No, sir.

Q. How many times have you been arrested since you have been here?

A. This is the first time I was ever in a court house.

Q. You are a North Carolina Cheroke Indian, are you?

A. Yes, sr.

Q. And you emigrated up there about ten years ago?

A. Yes, sir.

Q. How far did you live from Lewis at the time you saw him at Tulsa?

A. About two and a half miles.

Q. Now, then, if Monday was the 18th, and not the 19th, you will have to go back a day, won't you? It must have been Wednesday that he was at your house.

A. No, it was Thursday.

Q. How do you know?

A. Well, I went to my uncles that evening and staid all night,
332 and the next day I come down town, and was there in the afternoon.

Q. You know the next day was Friday, because you know the day before was Thursday.

A. Yes, sir.

Q. Well, what I want to get at is how you know that day was Thursday? What day is to-day?

A. It is along about Friday.

Q. Yes, that is right. What day of the week did the 4th of July come on this year?

A. I don't believe I can tell you exactly.

Q. What day did Christmas come on last year?

A. I did know, but I have forgotton.

Q. What day did the first of January—New Year—come on?

A. I don't know.

Q. What day of the week was day before yesterday, maybe you can tell me that?

A. Day before yesterday was Wednesday.

Q. You know that day before yesterday was Wednesday, because you you know that to-day is Friday?

A. Yes, sir.

Q. You must have been eating beans to-day?

A. Well, I did.

Q. Where did you stay Friday night?

A. The time the train was robbed?

Q. No, not that day, but the time that he was up at your house, and would not stay for dinner?

A. I staid at my uncles.

Q. Where did you stay the Friday night that the train was robbed?

A. I staid at my uncles.

Q. I would like for you to give some reason, besides that you ate beans, as to why you know these things happened on Thursday. If the Osage

payment was on Tuesday, it must have been Wednesday that you saw Lewis at your house, and Thursday that you met him in Tulsa?

A. No, he came to my house on Thursday.

333 Q. How do you know he did?

A. Because the next day was Friday.

Q. How do you know 'he next day was Friday; you know that because the next day was Saturday, and the next day was Sunday, and the next Monday, and you were at the Osage payment, and that was the 19th, so you have said. You have either got mixed on the date or the day of the week.

Mr. BARNES. You speak of the 19th as being the day she told you the payment was?

A. Yes, sir; she said it was the 19th.

Q. Do you know anything about Lewis being arrested?

A. He was arrested when I got back home.

Mr. CLAYTON. You can give no reason why you say this was Thursday except that you had beans?

A. Well, it was Thursday, because he was going to the payment.

Q. You can give no reason, except that you had beans? Answer me yes or no.

A. (No response.)

Q. Would you like to have a little cold water on your head?

(No response.)

(Witness excused.)

334 THOMAS EMMETT SMILEY, being called on behalf of defendant testified as follows, to wit:

Examined by Mr. BARNES:

What is you name?

A. T. E. Smiley.

Q. I will ask you first if you know a man by the name of James Hasty?

A. Yes, sir; I know him.

Q. I will ask you if you had a conversation with him soon after Mr. Lewis was arrested, charged with train robbery and murder, about Mr. Lewis's arrest?

A. Yes, sir.

Q. Did you talk with him about whether or not Mr. Lewis was at home or not at the time of this occurrence?

A. There was a conversation came up in regard to that.

Q. Where was the conversation?

A. In Bynum's store.

Q. Just tell what that conversation was.

A. I was working in Mr. Bynum's place, and Mr. Hasty came in, and we was talking about Mr. Lewis, and he wanted to know if they had him arrested, and I said yes, and he says, "Is he charged with this robbery?" and I said "Yes," and he said, "I can clear him." He says, "That can't be true, for I was at his house on that night, and he could not have been away from home at the time of the robbery."

Q. Are you acquainted with the reputation of Mr. Hasty in the community there where he lives?

A. Well, I know nothing particularly against Mr. Hasty.

Q. Are you acquainted with the way people regard him there?

A. Why, I have heard various remarks.

335 Q. The first thing you have to answer yes or no as to whether you know how the people generally regard him.

A. Well, I think I am.

Q. Is that character good or bad?

A. Well, so far as I know, it aint very good.

Q. Is that what the people say?

A. Yes, sir; I know nothing against him myself. I have heard remarks.

Q. Well, it must be his general reputation. Do you know how the people generally regard him?

A. Yes, sir.

Q. What is that character?

A. Bad.

Q. Do you remember anything about the time that Tom Claywell was taken away from there, the date?

A. Yes, sir.

Q. The date that he was taken away a prisoner?

A. He was taken away on the 15th of June.

Q. Was there any transaction in the store with you or Mr. Bynum that would fix that in your mind? Have you examined your books or anything to fix that date?

A. Yes, sir. I was subpœnaed here as a witness in that case.

Q. Was there any money transaction?

A. Mr. Claywell got some money from Mr. Bynum.

Q. What day?

A. On the day that he left, to pay his expenses down here.

Q. Do you know whether there was any business transactions that day with Mr. Lewis, the defendant here?

A. Yes, sir.

Q. Well, tell us about it.

A. Mr. Lewis came into the store during the day, I don't exactly know what time, with a gallon jug, and had me fill it with syrup or molasses, and I did so.

Q. What day was that?

On the 15th day of June, 1888.

Q. About what time in the day?

A. It was sometime in the forenoon. I think just before noon.

336 Q. Did you have any other transaction with Mr. Lewis on that day?

A. Yes, sir; we had ordered a *guage* wheel for a breaking plow, and I delivered it to him on that day and had Mr. Bynum to charge him for the wheel. We had ordered the *guage* wheel as we didn't carry them in stock, and I delivered it to Mr. Lewis, and as I didn't know the price of it I had Mr. Bynum to charge it to him.

Mr. BARNES. (Picking up book.) I now propose to introduce this book. (Handing witness book.) What entries are those there?

A. The sales to Mr. Lewis.

Q. What is this entry here?

A. That is Mr. Claywell's.
Q. What is the date?
A. June 15th.
Q. What is the amount?
A. $25.00. I know that Mr. Claywell came in and asked Mr. Bynum for $25.00.
Mr. CLAYTON. He was under arrest?
A. Yes, sir.
Mr. BARNES. And Mr. Bynum let him have it?
A. Yes, sir.
Q. And that is the day Mr. Isbell had him there under arrest?
A. Yes, sir.
Q. Now, then, go on with the entries of Mr. Lewis. What entries do you find there, and on what day?
A. I find him charged on June 15, 1888, with syrup, 50 cents, and with a *guage* wheel, $6.00.
Q. Did you fill that jug with syrup?
A. Yes, sir.
Q. What did you do with it?
A. I set out in the front of the store.
Q. Now, about this *guage* wheel?
A. Well, it was a special order, and I went to the depot and got the wheel, and delivered it to Mr. Lewis, and as I did'nt know what it was worth I told Mr. Bynum about it, and had him charge it to Mr. Lewis.

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Cross-examination:

Mr. BARNES. I want to offer this book to the jury.
Mr. CLAYTON. All right. [To witness]. Now I want you to go back and see if there is any entry against Mr. Lewis on the 13th. I see you write the day of the week—Wednesday the 13th, and Thursday the 14th, and Friday the 15th?
A. Yes, sir.
Q. Do you find any entry against Mr. Lewis on the 13th?
A. Yes, sir; coffee one dollar, and soda ten cents.
Q. That is on June 13th. Now see when the next entry was made.
A. On the 15th.
Q. I 'elieve you say Mr. Lewis got these things on the 15th in person?
A. Yes, sir.
Q. Now, I see a charge against Mr. *D*laywell on the 16th. Did Mr. Claywell's family run an account there after he left?
A. Yes, sir.
Q. Well, you have Saturday the 16th, and you skip Sunday.
A. Of course I would have no entries on Sunday.
Q. I want you to look and see if there is not an account against Tom Claywell on the 18th—the man you say was arrested?
A. Yes, sir; there is.
Q. Now, you say that the day that Mr. Lewis was there was the day that Tom Claywell was there under arrest?
A. Yes, sir; and I was subpœnaed as a witness in the case that day.

Q. If it should turn out that you was subpœnaed on the 18th, then it was that day that Tom Claywell was there under arrest?

A. I know nothing about the records, but he got the cash the day he was under arrest.

Q. And you know that was the 15th from your books?

A. Yes, sir.

Q. And you know that the day he got the cash was the day you was subpœnaed?

A. Yes, sir.

Q. And you know the day that you was subpœnaed was the day you saw the defendant in your store?

A. Yes, sir.

(Here court takes a recess until half past seven p. m., October 23, 1891.)

Night session, October 23, 1891, 7:30 p. m.

T. E. SMILEY—continued:

Mr. Smiley, Tom Claywell was charged with larceny, wasn't he?

A. Yes, sir.

Q. Mr. Isbell arrested him on one day, and on the next day subpœnaed you, didn't he?

A. I don't know when Mr. Isbell arrested him. He came in early in the mo*r*ning.

Q. Do you know where Tom Claywell lived then?

A. Yes, sir.

Q. How far from Tulsa?

A. Six or seven miles.

Q. Did you see him early in the mo*r*ning?

A. Well, it was, I would say, from eight to nine o'clock, or probably a little later than that; I don't know the exact time, but it was sometime in the mo*r*ning.

Q. You don't know whether he was arrested at his home or not?

No, sir.

Q. But you know that Mr. Isbell arrested him and brought him to your store, and that is the time that you saw Mr. Lewis there?

A. Yes, sir.

Q. Whatever day that was was the day you saw Lewis?

A. It was the day that he brought Claywell in there.

Q. You was subpœnaed upon that day?

A. Yes, sir. Mr. Isbell called me out of the store and subpœnaed me.

Q. Did you go right away to answer the subpœna?

A. No; the subpœna read forthwith, but he said he had some other prisoners there at Vinita, and that he would go there, and for me to start Sunday and meet him on Monday.

Q. Anybody else on the subpœna?

A. I don't know. There were other witnesses here on the case, but I didn't read the subpœna.

Q. (Handing witness paper.) Look on the back of that and see what day it was served on you; 18th of June, ain't it?

A. Yes, sir.

Q. Look at that writ and please tell the date of the return of the officer upon which he arrested Mr. Claywell?

A. Arrested him upon the 17th.

Q. Upon the 17th day of June, and subpœnaed you on the 18th?

A. He has it that way, but he is mistaken.

Q. Well, we will see. The sworn return of an officer is not liable to be mistaken, especially when his fee depend' upon getting the date as far back as he is allowed.

Q. Now, sir, you have no recollection of the dates, except from what your books show?

A. No, sir.

Q. Now look at page 133 of the book and see if there is an entry against Claywell?

A. Yes, sir.

Q. If you let Claywell have anything it was charged to him, and if his family got anything it was charged to him the same?

A. Yes, sir.

Q. You charged it all to Tom Claywell?

A. Yes, sir.

Q. Did you always put down th/ese things at the time upon which they were gotten?

A. Yes, sir.

Q. Invariably?

A. Yes, sir.

Q. I notice back here somewhere you change the date, July 4, from Wednesday to Thursday. How did that happen?

340 A. I suppose that was an error and corrected afterwards.

Q. If you hadn't changed that it would have been an error, wouldn't it?

A. We post every night.

Q. If you hadn't seen that date and changed it, it would have been an error on the books now?

A. Yes, sir.

Q. Then your books would not have spoken th' truth. Now, then, you let Tom Claywell's family have goods; I suppose you let Mr. Lewis's family have goods sometimes when he wasn't there?

A. Yes, sir; both families got goods.

Q. Then, from your books alone you can't tell whether Lewis got the things, or whether it was some of his family?

A. No, sir.

Q. You did a pretty good business there, didn't you?

A. Yes, sir.

Q. I notice that sometimes you run through several pages on a day. Did a good business?

A. Yes, sir.

Q. You can't remember three years back everybody that came into the store?

A. No, sir.

Q. I don't suppose you could remember two days back everybody that came into the store?

A. No, I could not I should not think.

Q. Now, in regard to this *guage* wheel; you say that was a special order?

A. Yes, sir.

Q. If that was a special order for Mr. Lewis he would be required to take it whether he wanted it or not. You had bought it for him, and, therefore, as soon as you got the wheel you would make the charge against him, whether he was there to receive it or not?

A. No, sir.

Q. Well, now, wouldn't it be the proper thing to do when you made a special order for a man to charge that to him as soon as it came?

A. I don't know; it wasn't in this case.

Q. I am talking about if that isn't the proper thing to do?

A. Yes, sir; I think it would be.

Q. You don't undertake to say that you remember how you charged every farmer up there for all the little things you sold them?

341 A. Mr. Lewis called there to see me, and we had a conversation in regard to the matter, and I remember that very plainly.

Q. And you remember that this thing occurred at the same time Claywell was there, and he wasn't there until the 17th. You have here a charge against Claywell on the 18th?

A. Yes, sir.

Q. What time did Claywell leave there the day he was arrested?

A. It was sometime about 11 o'clock.

Q. I notice on the 16th he is charged with a pair of boots, a shirt, overalls, and two shirts.

A. He gave the order for the goods and let the man have them.

Q. Don't you know that on Saturday, the 16th, that Mr. Claywell came in your store, and got the goods himself?

A. No, sir; he wasn't there the 16th.

Q. How did Mr. Isbell take Claywell off?

A. He took him on the train. He said he was going to send his wagon through from Vinita; he had some prisoners there in camp.

Q. When did you come down here?

A. I don't remember; I was to have started Sunday, but I got a telegraph that Mr. Isbell was searching for the train robbers, and not to come until further orders, and I don't remember when I did get here. I can tell you from the books when I left Tulsa; I think I was here on the 26th.

Q. You say you went down to the depot and got this little wheel?

A. Yes, sir. He came and wanted it, and I went and got it.

Q. How many of them have you ever sold?

A. I don't suppose the store has sold ten.

Q. How many jugs of molasses do you suppose you have sold?

A. A great many.

Q. And yet you remember that on that day you sold Mr. Lewis a jug of molasses.

A. From the books I do.

Q. Only from the books?

A. No, sir; I don't remember, only from the books.

342 Q. How do you know he was there on that day?

A. I know he was there, and I get the books to give the date.

Q. How do you remember he got the jug of molasses?

A. Simply because he sent for me after he was arrested and asked me did I remember of his being there, and he brought it so plainly before my mind that I remembered it distinctly.

Q. He is the man that made you remember it?

A. Yes, sir; he is the man that called it to my memory. I remembered of his being there, and I went to the books for the date.

Q. And you are not willing to admit, after seeing the return of this office, that it was not until the 28th that you were subpœnaed and this thing occurred? You fixed this in your mind from the fact that Tom Claywell was under arrest, and you were subpœnaed that day. You know that these things that you are testifying about, about him getting that wheel and the jug of molasses, occurred on the same day that you were subpœnaed?

A. Yes, sir.

Q. Those two things are in your mind together?

A. Yes, sir.

Q. There is no trouble about fixing that?

A. No trouble about that.

Q. Do you know Bill Jones?

A. Yes, sir.

Q. What name did he go by up there?

A. Bill Jones.

Q. He is William McChristian?

A. Yes, sir.

Q. When did you learn that?

A. I learned it at the Claywell trial.

Q. He was a witness in that case against Claywell?

A. Yes, sir.

Q. Lewis Scott and Joseph Moberly, were they witnesses?

A. Yes, sir.

Q. Joseph Newman?

A. I don't know that last name at all.

Q. These others you do remember?

A. Yes, sir.

Q. They were all witnesses?

A. Yes, sir.

Q. (Taking up book.) I want you to point out to me your handwriting. Is this Claywell entry your handwriting?

A. No, sir.

Q. Is this your handwriting?

343 A. Yes, sir; the A. S. Lewis and the syrup is.

Q. The guage wheel is in Mr. Bynum's handwriting?

A. Yes, sir.

Q. Mr. Bynum runs the store?

A. Yes, sir.

Q. He was Baird's banker?

A. No, sir; he furnished Baird goods.

Q. And cashed his drafts, didn't he? There is only one Bynum there? Is he here?

A. Who?

Q. Mr. Bynum.

A. No, sir.
Q. Is that cash entry entry to Claywell in your handwriting?
A. No, sir; that is in Mr. Bynum's handwriting.
Q. The Tom Claywell entry of the 15th is all in Mr. Bynum's handwriting?
A. Yes, sir.
Q. This is what you call your blotter?
A. Yes, sir; daybook or blotter.
Q. Did you keep any books besides that?
A. No, sir; only that and the ledger.
Q. Did the salesmen keep a memorandum book?
A. No, sir.
Q. How many salesmen were there besides you?
A. I was the only one at the time.
Q. This item of the 18th, to Mr. Claywell, whose handwriting is that?
A. That is mine.
Q. Whose handwriting is the Claywell entry of the 16th?
A. That is mine.
Q. Do you think Mr. Hasty has got a bad character?
A. Why, I have heard a number of them express themselves in that way.
Q. You think you know what his character is, do you?
A. I have heard parties express themselves in that way.
Q. Do you think you have heard enough people express themselves to state that you know the sentiment of that community?
A. Yes, sir; I think I do.
Q. What is your business now?
344 A. I am in the milling business; I have a sawmill and cotton gin.
Q. You have quit the merchant business?
A. Yes, sir.
Q. What do you mean about Hasty having a bad character?
A. For his truth.
Q. For not telling the truth?
A. Yes, sir.
Q. Did he ever deal with you?
A. No, sir; I said I didn't know anything personally.
Q. Did he ever deal with you?
A. He bought goods there, I suppose, and paid the cash for it.
Q. How far have you lived from him during the last two years?
A. I don't know where he has been living.
Q. Was it since or before he has been a witness against Lewis that you have heard it discussed?
A. It was before.
Q. Who have you heard speak of his character?
A. This man Bynum and Dr. Bland; that was when he lived in Tulsa; he lived in Tulsa before he went to Mr. Lewis; I think he was camping out.
Q. A laboring man?
A. Yes, sir.
Q. I suppose you know the reputation of all the laboring men in that country?

A. No, sir; I do not.
Q. Did you know Holloman?
A. No, sir.
Q. Did you know Queen?
A. No, sir.
Q. Did you see either of these men?
A. I saw two that they said belonged to the gang afterwards.
Q. Who were they?
A. They said one of their names was Johnson, and the other I disremember.
Q. Was it Queen?
A. No.
Q. How long after this?
A. I don't know. They came in the store, and some one said they was two of them.
Q. How long was that after the killing?
A. I think it was before; I am not positive about that, but I knew none of the parties.
345 Q. You never saw them afterwards?
A. Not that I know of.

Redirect examination:

Mr. BARNES. I will ask you if there was a sale made there to M. B. Baird on the 16th of June?
A. Yes, sir.
Q. You say this $25.00 was furnished to Claywell after he was arrested, on the day he came to town?
A. Yes, sir. He came to Mr. Bynum and told him openly that he wanted $25.00 to pay his expenses down here. He was under arrest.
Q. You don't know when that return of the marshal was written?
A. No, sir.
Q. You don't know whether he had the writ when he arrested Claywell, or whether he telegraphed for it?
A. No, sir; I don't know anything about that.
Q. When he read that subpœna to you did he read any other names?
A. I don't know whether he did or not.
Q. Now these things that are charged to Claywell on the 16th, you say he left an order with you to let a party have the goods?
A. Yes, sir; when he was there the day before he told us to let this man, Lester was his name, have the goods. Lester was working for Claywell.
Q. Claywell had a good deal of property?
A. Yes, sir.
Q. And he had credit in the store on account of his property?
A. Yes, sir.
Q. Mr. Clayton has asked you about the entry on the 18th, about the tobacco; what else is there besides tobacco?
A. Tobacco and soda.
Q. There is another entry on the 20th; who is that to?
A. Tom Claywell.
Q. Then on the 23d is there another one?

A. Yes, sir.

Q. On the 28th?

A. There is tobacco, Tom Claywell. There is none of that in my handwriting; I was here, I guess, at that time.

Q. You know that Claywell left the order for this man to get these goods?

A. Yes, sir.

Q. And you know that he got the money to pay his expenses down here?

346 A. He was in the hands of the marshal; on his way with him.

Q. You say one thing that fixed these things on your mind was that Mr. Lewis sent for you after he was arrested.

A. I was at his camp, and he sent for me to come and see him, and I remembered the getting of the goods, but I could not remember the date; and he said it was on the day of the train robbery, and I went and looked at the books and saw it was the 15th.

Q. Lewis hadn't seen them?

A. No, sir.

Q. When you was at the camp he told you how it was, and you went to your books and found it was that way?

A. Yes, sir.

Q. Do you know whether Mr. Halsell went down to Vinita on Friday, the same day that Claywell was taken away from there?

A. No, sir; I don't remember.

Q. Do you remember whether you saw Mr. Halsell that day?

A. No, sir.

Q. He is a prominent cattle man?

A. Yes, sir.

Q. Now in regard to this date that you fix. If I understand you, Mr. Isbell had a camp in Vinita, and he had a lot of prisoners there?

A. Yes, sir. He subpœned me Friday morning, and said he was going to Vinita, and said for me to leave Tulsa on Sunday and meet him here on Monday.

Q. In the meantime, when he got to Vinita, the report was out about this robbery, and then what?

A. I got a telegram not to come just a little while before the train started Sunday morning, telling me not to come, and I don't know just when we did come to Fort Smith.

(Witness excused.)

347 Mr. BARNES. I now offer this book in evidence.

(Book referred to being day book kept by Mr. Bynum, at Tulsa, I. T., in June, 1888.)

(Book is shown to jury, and different entries referred to above are pointed out to them.)

W. L. MORRIS, being called and sworn on behalf of defendant, testified as follows, to wit:

Mr. BARNES. Mr. Morris, do you know the defendant, Lewis?

A. Yes, sir.

Q. Where were you living in June, 1888—three years ago?

A. I was living in a cabin on a little creek that empties into the Verdigris, in the Cherokee Nation, that they call Flat Rock, on Tom Claywell's place.

Q. How long had you been there?

A. From the 9th day of June.

Q. Well, if you had any dealings with Mr. Lewis along in June, 1888, with reference—did you hear of the train robbery and murder there in June, 1888, after it occurred?

A. Yes, sir; I heard of it.

Q. Now, previous to that time, or near that time, if you had any dealings with Mr. Lewis, just commence and tell us in your own way where you saw him.

A. Well, I saw him at the time, the last time I had dealings with him, I don't remember when I had seen him before I moved to the Claywell place, but I went on Tom Claywell's place, pretty close to Mr. Lewis's, and he came there, he come to the camp, and a relative of his, or acquaintance, or something, anyhow a man by the name of Queen came there oftener than Lewis did. At the same time Mr. Lewis was proposing to give anyone that needed it a job of work, and we was just hard enough run to need a job of work. I had no conversation with him.

Q. Well, if you did anything about a trade, just go on and tell it.

A. Well, they proposed to sell me some cattle, and I didn't have the money then, and finally Queen turned the matter over to his agent, Mr. Lewis, and I just let the matter drag along to the middle of the month. Mr. Archer, a merchant there in Tulsa, was to pay me some money
348 the middle of the month, when he shipped his cattle, and finally I went over one day to see Mr. Lewis, and they said he was in town, and I just remarked that he went to town every day.

Q. Go on and state what you did the middle of the month.

A. I let the thing drag along until the middle of the month, and as I was saying, I went over to see Mr. Lewis and he was not at home, and I left word with his folks to tell him to come to town the next day.

Q. Did you go to town the next day?

A. Yes, sir.

Q. What day of the month was that?

A. From what I can refresh my mind from Archer's books, it was the 15th of the month.

Q. Now, then, just tell if you saw Mr. Lewis that day in Tulsa, and if you met him, how often?

A. Well, I saw him on the street between what we call Newland's drug store and Archer's when I first saw him and I had pretty near give up seeing him, and I went to him and talked to him there some, and I finally left him, and then as he was untying his horse I went to him a second time, and he took his horse loose from the fence and got on his horse and rode off towards the blacksmith shop, and I went to Archer's and the last I saw of him he was standing near the old shop that belonged to Gruell.

Q. What kind of an animal did he have?

A. He had a gray mare, if I recollect right; a light gray mare that I think his folks has got about the place yet.

Q. Why did you leave him that day?

A. Because he wanted more for the cattle than I could pay.

Q. Did he ask more than Queen?

A. Yes, sir.

Q. And afterwards you saw him get his mare and go towards the blacksmith shop?

A. Yes, sir; and I noticed he was still at the blacksmith shop when I went through the streets to go home.

Q. Do you know about what time you went home?

A. No; I don't recollect just what time I went home, but it was about the middle of the day or maybe a little after.

Q. That is as near as you can remember about that?

A. I believe it is.

Q. Now, do you remember of buying some things on that day?

A. Yes, sir.

Q. Can you remember how long since you had been in town before that?

A. No, sir; I don't know; I didn't go to town every day.

349 Q. Now you say you went to his house, and his family said he was at town, and you left word for him to meet you in town the next day, and the next day you went to town, and saw him?

A. Yes, sir.

Q. Can you see to read this book here to-night?

Mr. CLAYTON. You can't prove that book by him.

Mr. BARNES. I understand that.

Mr. CLAYTON. I object to his taking up time. You can't refresh his memory by that.

The COURT. Not until it is identified.

Mr. BARNES. Can you remember the items you bought on that day?

A. No, sir; I can't.

Q. All you remember about it is that you refreshed your memory by that book. You went to see Mr. Archer?

A. Yes, sir; and went and looked at the date, or had him to look.

Q. When were you subpœnaed—was you subpœnaed at the last term of court?

A. Yes, sir.

Q. You say you remember, independent of any items you bought, that you had in your mind the middle of the month, and that you was going to try to get some money to pay for the cattle?

A. Yes, sir.

Q. But as to what you got, you don't remember?

A. No, sir; I dont remember just what I got.

Q. But on the day you saw him there you bought these items?

A. Yes, sir.

Q. Do you know when Claywell was arrested with reference to this particular time?

A. Yes, sir; I do.

Q. When was he arrested?

A. He was arrested the morning I went to town.

Q. Then if the books show that you were there on the 15th, and these items are charged on the 15th, and if that was the day of the same morning that Claywell was arrested, that is the day you saw Lewis there?

A. Yes, sir; and I recollect that when I went to town, it was talked around that they had shipped Tom that morning.

Q. That they had shipped Tom?

A. Yes, sir.

350 Q. The talk was that they had shipped Tom that morning?

A. Yes, sir.

Q. And that was the same morning that you saw this defendant there, and that these other things occurred?

A. Yes, sir.

Mr. CLAYTON. Shiped Tom Claywell, wasn't it?

A. Yes, sir.

Mr. BARNES. You can't remember; but you think it was sometime after 12 o'clock that you went home?

A. Yes, sir.

Q. And the last you saw of the defendant was there at this blacksmith shop?

A. Yes, sir; standing there holding his mare, and if I am not mistaken, he was then in conversation with a man by the name of Wilson, that he had sold a sulky plow to, I think. I don't know how long he staid, but I left him there at the shop.

Q. You had bought some things before this time?

A. Very little.

Q. You don't know how many days it was?

A. No, sir.

Q. If the books show that you were in town after that and bought some items, you don't remember how many days it was?

A. No, sir.

Q. You don't know how many days on either side of the 15th of June that you had made purchases?

A. No, sir.

Q. I suppose that whatever purchases were made was entered on the book?

A. It certainly was. He charged me with what I got, I presume.

Cross-examination:

Mr. CLAYTON. What is your name?

A. Morris.

Q. How often were you at town?

A. I could not say.

Q. Every few days?

A. Probably once a week.

Q. Would you go to Mr. Archer's store, and buy every time you was there?

A. Yes, sir; what I bought I bought there. I didn't deal at any other store that month, I reckon.

Q. Now, this was after the arrest of Claywell, was it, that this thing occurred that you are talking about?

A. Yes, sir; it was late in the day, and they arrested Claywell early in the morning.

Q. How do you know?

A. Why, I seen them come to town with him.

Q. Saw him that day? Are you sure? That has been a long while ago.

351 A. Yes, sir; it has been a good while ago.

Q. Your memory is not as vigorous now as it was when you were young?
A. I can remember things that occurred when I was a boy.
Q. Yes; but since you have been old you can't remember so well, can you?
A. Some things I do.
Q. You saw that Queen and Lewis came down there to your camp?
A. Yes, sir; they did, occasionally.
Q. Come together?
A. I don't remember that they ever did.
Q. Seemed to be pretty thick, didn't they?
A. I didn't think they were much.
Q. When you went over to Lewis's house, did you see anyone there?
A. Yes, sir.
Q. Who?
A. I saw Mrs. Lewis.
Q. Did you see Queen?
A. No, sir.
Q. You didn't see Queen or any of these robbers?
A. No, sir; I didn't.
Q. Didn't see any of them there at all?
A. I knew none of them only by reputation.
Q. You knew Queen, didn't you?
A. Yes, sir.
Q. That wasn't by reputation?
A. He had no such reputation then.
Q. He didn't have any reputation. You said you didn't know any of them except Queen. You did know Queen?
A. I didn't know him as a robber.
Q. You didn't know that he had stolen horses up there at Lewis's?
A. No, sir.
Q. You didn't know that Mr. Lewis had some stolen horses up there with his brand on them?
A. No, sir.
Q. What was his brand?
A. I don't know.
Q. How often was Queen down there at your place?
A. I don't remember but the one time.
Q. When did you move to Tom Claywell's place?
A. I moved there the 9th of May.
Q. Was you there when he was arrested?
A. Yes, sir.
Q. Did you see him while he was arrested?
A. No, sir. When I went to town I heard that they had shipped Tom.
352 Q. You didn't see him in Tulsa on that day?
A. No, sir.
Q. What time in the day did you get there?
A. I don't remember what time.
Q. You say you had waited a long while on Lewis?
A. I only rode in a walk.

Q. How long had you been in Tulsa before you got disgusted?
A. About an hour, I guess.
Q. You waited about an hour, and then you had your talk about the cow, and then you went and bought some things, and then left for home, and left him at a blacksmith shop about noon?
A. Yes, sir.
Q. So you must have been there the greater part of the forenoon?
A. So I was.
Q. Well, did you see Claywell there?
A. No, sir.
Q. He wasn't there?
A. Not at Tulsa, no.
Q. He had been shipped?
A. That was the common talk about town that they had shipped Tom that morning.
Q. That is the way of it?
A. They had shipped Tom.
Q. Tom Claywell wasn't there, then, up to nearly noon of that day?
A. Why not? At least if he was, I didn't see him.
Q. Well, you would have seen him. You was a renter on his place?
A. Yes, sir.
Q. You would have seen him if he had been there?
A. I think so.
Q. Of course this was so long ago you don't know what month it was?
A. I think I do.
Q. Can you?
A. I think from my memory and the books, it was the middle of June.
Q. You think that was the middle of June?
A. Yes, sir; that was my calculation to raise that money to buy a cow the middle of June.
Q. What do you call the middle of June?
A. The 15th.
Q. Wouldn't you call the 14th the middle?
A. Yes, sir; it would be about the middle.
353 Q. You didn't intend to get there just the 15th day of Juene, did you?
A. I suppose I did.
Q. You had made up your mind to go there on the 15th day of June?
A. Yes, sir; exactly.
Q. You went on the 15th of June?
A. That was my intention, exactly.
Q. You remember that, independently of the books?
A. Of course I do, because I had my calculations made, and had it in my head before I went to town.
Q. Then why did you tell Mr. Barnes you refreshed your memory from the books?
A. Yes, sir; I did.
Q. You didn't refresh your memory for nearly three years, did you? You see you are talking about things that occurred three and a half years ago.

A. I am aware of that.

Q. Do you intend to say that you were going there to make that cow trade upon the very fifteenth day of June, and that that was your intention, and that you now remember that thing?

A. Well, I am not sure what day of the week it was, but I think it was about Friday.

Q. Well, you intended to go the 15th of June, and did go, and he wasn't at home? Don't go back on that, old fellow.

A. That was my intention; I intended to make the trade just about the middle of June.

Q. You see you make a difference when you see that the 15th day of June would be the day before you met him in Tulsa. I am going to hold you to it too, you old sinner. You can't do me that way, sir; you understand that. You have said, and you have said it under oath, that you intended to make that trade exactly on the 15th day of June.

A. I just made that calculation exactly, sir, as I told you.

Q. Then, if you intended to make the trade on the 15th day
354 of June, you went to his house on the 15th day of June, because that was the day you intended to make the trade, didn't you? You have got to own up to that, because if you intended to make the trade on the 15th day of June you went down there to his house on that day, and he wasn't at home, and that was the 15th of June, and it was after the 15th of June, on the 16th, on Saturday, when you saw him?

A. No, sir, I don't; because I went over to this man Wilson's that day.

Q. Of course you remember that was Saturday, back three years ago?

A. I do recollect it was Saturday. I recollect pretty well three years ago.

Q. You remember it was Saturday because you wanted to go up there some place?

A. Yes, sir.

Q. How do you remember it was Saturday?

A. What makes one remember anything?

Q. I can't remember what day I went any place three years ago on a mere matter of business.

A. I usually take Saturday to go.

Q. If you say you remember it from the entry on the book, then you have something to remember it by; but you have discarded the books and say that you intended to make the trade on the 15th, and when you find that that puts you down in Tulsa on the 16th day of June you take water.

A. Oh, no.

Q. Oh, yes. Now you see where your positiveness leads you to. You must admit that you didn't intend to go down there on the 15th day of June, but that when you speak of the middle of June you mean two or three days on either side of the 15th, or else we have got you down here on the 15th, when you find him away from home, and we find you in Tulsa on the 16th, the next day. You can't get out of that to save
355 your life. The truth of the matter is, you don't know anything about it.

A. Well, I'll bet I remember you for three or four years.

Q. I trust so. I always like to have my friends remember me. I would be glad if you would remember me in your will. I don't think I

would get much, but at the same time it would be a mark of endearment that I would appreciate.

A. I don't expect you need it.

Q. I wish I could say the same for you, but I can't. Now, what have you to say about that? Will you admit that your recollection is only from these books, or do you still insist that it was your intention to make that trade exactly upon the 15th day of June?

A. It was my calculation to let the thing drag along until about the middle of June, and then I expected to get some money from Mr. Archer if he got his money from his cattle.

Q. That is what I understood you to say, but when I fastened you down to about the middle of June, you told me positively that it was the 15th that you intended to make the trade. Well, now were you in Tulsa on the 22 of June?

A. I ain't sure whether I was or not; probably I was.

Q. You don't know.

Q. If you were to look at the books and see that you had got some things on the 22, would you be willing to swear you was there?

A. Yes, sir; I guess I would.

Q. If you were there on the 22d of June, tell me who you saw?

A. If the books show that I was there on the 22d, I expect I saw Mr. Archer.

Q. What did you do, if anything?

A. I don't know just what I did do.

Q. Who else did you see besides Archer? I will inform you that on the 22d of June, which was Friday; it is marked in this book Friday, and there is an entry showing you to have been there upon that day.

356 Now, might that not have been the Friday you were there?

A. No.

Q. It is a Friday, and it is in June; it is three and a half years ago, and the books show you bought something of Mr. Archer. I just merely mention that to you to refresh your memory.

A. It wasn't my calculation to be there that late. I could talk to you a little if you would let me talk in my own channel, and not drag me out into yours.

Q. A man that remembers as well as you do ought to be willing to be dragged out of his channel.

A. My memory is good enough for to know.

Q. You don't remember being there the 22d of June?

A. I don't know that I have anything to impress my mind with being there on the 22d.

Q. Might not that have been the day you went to get your money from Mr. Archer? A week afterwards, just one week after the Friday you say you was there. Mr. Archer, I will ask you if on Friday, the 15th, you bought 50 pounds of flour? What do you say?

A. Well, I can't answer you; you ask so many questions.

Q. Well, I will ask you just one question, and I want you to answer it: you say you went on Friday, June the 15th, to Tulsa?

A. Yes, sir.

Q. While there you went to Mr. Archer's store, and you bought something. Did you while there buy 50 pounds of flour? When did you buy it, if at all?

A. I bought it along as I needed it. If I needed it along about that time I bought it.

Q. Well, did you buy a half gallon of coal oil?

A. Well, now you get after me on such little trifles.

Q. Well, you ought to remember whether you carried home flour and coal oil. Did you carry home any coal oil?

A. I am not sure about that.

Q. Did you buy any tobacco on that day?

357 A. I expect I bought tobacco every day I was there. Did you buy any soda or matches? I expect I can tell you something you bought—brooms; did you buy any brooms? You would remember if you carried a broom home; it would be sticking out from your horse? Did you buy a broom on Friday, the 15th of June, or was it Friday, the 22d of June?

A. Well, I shall exactly sit here like an old 'possum, and I will be danged if I will answer your damned old questions any more.

Q. Well, I hope your honor will pardon the expression. (To witness.) You will be danged if you will answer my damned old questions any more?

A. Don't make it any worse than it is. I am getting mighty tired.

Q. You seem to be a cussin' man?

A. I am a very quiet man.

Q. You won't answer me whether you bought a broom or not?

A. Yes, sir; I bought a broom in my time, I guess.

Q. Did you buy brooms upon that occasion?

A. I don't remember.

Q. Did you?

A. I don't know.

Q. You won't be positive?

A. No, sir.

Q. You won't say about that? But you do know you saw the defendant?

A. Yes, sir.

Q. And you know it was Friday, the middle of the month. How long before this were you there? Was you there on the 11th?

A. I may have been.

Q. You never went over there except on Friday, did you?

A. I am not sure about that. I guess I have been there Sunday as well as Friday.

Q. I will ask you if you were there on June 27th, and June 6, and June 1st?

A. If that book shows I was there, I was there.

Q. If this book shows you were there June 1st, June 6, June 11, June 15, June 22, and June 27, you were there?

A. Yes, sir.

Q. How do you know it was June 15th that you saw the defendant?

A. I have told you.

358 T. J. ARCHER, being called and sworn on behalf of the defendant, testified as follows, to wit:

Mr. BARNES. Where do you live?

A. At Tulsa.

Q. What is your business?

A. General merchandise.
Q. Were you there in business in 1888?
A. Yes, sir.
Q. Same business?
A. Yes, sir.
Q. Do you know a man by the name of James Hasty?
A. Yes, sir.
Q. Are you acquainted with his reputation there in the community where he lives; that is, as to how the people regard him for truth?
A. Yes, sir.
Q. What is that reputation; is it good or bad?
A. It is bad.
Q. Do you know W. L. Morris?
A. Yes, sir.
Q. Did you have any dealings with him in which you bought a yoke of cattle from him?
A. Yes, sir.
Q. When were you to pay him?
A. In June, I believe.
Q. When you shipped your cattle?
A. Yes, sir.
Q. I will ask you whose book that is (handing witness book).
A. That is my book.
Q. Just run over this book, and give the first item charged against Mr. Morris in June.
A. It is page 47. W. L. Morris, per Thomas Clawell, credit, $4.35, June 1st. June 6th, page 49, W. L. Morris, $2.90. On page 51m, June 11, W. L. Morris, $1.30.
Q. How many items on the 11th?
A. Sugar 50 cents, rice 30 cents.
Q. What is the next?
A. June 15, tobacco, 20 cents; broom, 15 cents; soda, 15 cents, and matches, 10 cents; total, 60 cents.
Q. Go on to the 22d?
A. Page 59, W. L. Morris, flour, $1.35.
359 Q. Go on to the next.
A. Page 64. Sugar, 50 cents; rice, 50 cents; total, $1.00.
Q. This book, then, shows that the last time before June 15th that he made any purchase of you was June 11, and the first time after June 15 was June 22?
A. Yes, sir.
Q. Now, you may state whether or not these articles were sold to Mr. Morris in person or not?
A. Yes, sir; what dealings I had with him was in person.
Q. Were the items that he got on the 15th charged to him on that day?
A. Yes, sir.
Q. Are the entires on the 15th in your own handwriting?
A. Yes, sir.
Q. Does your book state what day it was?
A. Yes, sir; it was Friday, June 15, 1888.

Mr. BARNES. We want to introduce this book.

Mr. CLAYTON. Just consider it in.

Cross-examination:

Mr. CLAYTON. I notice that this Friday, June 15th, seems to be in different ink from the last item on the 14th.

A. It may be different ink.

Q. It is, isn't it?

A. I don't think it is.

Q. Isn't there a difference between that and all the rest?

A. No, sir.

Q. That is your handwriting?

A. Yes, sir.

Q. Is all that your handwriting?

A. All this on these two pages is; yes, sir.

Q. There seems to be a different handwriting over here.

A. No, sir; that is all mine.

360 Q. Turn to page 45. Is that all your handwriting?

A. Yes, sir.

Q. Turn to page 51, that is Saturday; is that your handwriting?

A. Yes, sir.

Q. June 15, page 55, is that your handwriting?

A. Yes, sir.

Q. June 22, page 57, is that your writing?

A. No, sir; I think it is Sam Davis's.

Q. June 27, page 64, is that your writing?

A. Yes, sir.

Q. All you know about it is that your dealings were personally with Mr. Morris, and that your books show these different times during the month of June, 1, 6, 11, 15, 22, and 27?

A. Yes, sir.

Mr. BARNES. He asked you whether this all appeared to be written in the same ink. Did you have this book here at the last term of court?

A. No, sir.

Q. I requested you to examine it when you went home?

A. Yes, sir.

Q. And then you wrote me what it showed?

A. Yes, sir.

Q. You say you made these entries?

A. Yes, sir.

Q. And they are true entries?

A. Yes, sir.

Q. You came down last term of court without your book, and I told you to bring it this time?

A. Yes, sir.

(Witness excused.)

361 The book referred to by above witness is now offered in evidence, and the attention of the jury is called to pages 45, 49, 51, 55, 59, and 64 thereof.

JAMES CRUTCHFIELD, being called and sworn on behalf of the defendant, testified as follows, to wit:

Q. (By Mr. Barnes.) Do you know this defendant, Mr. Lewis?

A. Yes, sir.

Q. Do you know one James Hasty, who is here as a witness.

A. Yes, sir.

Q. Are you acquainted with his reputation in the neighborhood where he lives, by the people generally?

A. Yes, sir.

Q. Is it good or bad?

A. It is not very good.

Q. Did you hear of the robbing of the train on the Verdigris River in June, 1888?

A. Yes, sir.

Q. State whether or not you was in Tulsa about the middle of June, 1888?

A. About the middle of June?

Q. Yes, sir.

A. Yes, sir; I was there.

Q. Do you remember what day of the week you was there?

A. I was there on the 15th.

Q. Was you there on the 16th?

A. I don't think I was.

Q. You was there on the 15th.

A. Yes, sir.

Q. Who else was there on that day, if you remember? I will ask you if W. E. Halsell was there?

A. Yes, sir.

Q. Was you at that time connected with him in business?

362 A. Yes, sir; I had charge of his cattle ranche.

Q. Had you a large business there?

A. Yes, sir; had a large business.

Q. You had charge of his business?

A. Yes, sir.

Q. I will ask you if you know this handwriting [handing witness piece of paper]?

A. I can not recognize it by this light; my sight is not good.

Q. Have you ever seen that paper before?

A. I don't know as I have. If I had a pair of specs I might tell; I can't see very good by a lamp light. [Witness gets specs.]

Q. Now, then, is that your handwriting?

A. Yes, sir; that is my handwriting. I could not see without specs.

Q. Did you write that?

A. Yes, sir.

Q. Who did you write it for?

A. I wrote it for Thomas Claywell.

Q. Whereabouts did you write?

A. I wrote it in the town of Tulsa; I can't say what house I was in.

Q. State whether or not Claywell was present in the hands of a deputy marshal?

A. Yes, sir; he was.

Q. In whose hands?
A. Mr. Isbell, United States marshal.
Q. You say that is in your handwriting, and you wrote it for him?
A. Yes, sir.
Q. What day of the month is it?
A. The 15th day of June.
Q. You wrote that for him while he was a prisoner in the hands of the deputy marshal?
A. Yes, sir.
Q. And you wrote it on the 15th day of June in Tulsa?
A. Yes.
363 Q. Who did you write it to?
A. To his step son.
Q. Do you know what became of Claywell that day?
A. He was taken away from there on the train that day.
Q. About what time of day did the train leave?
A. Eleven o'clock; I think the train left at that time.
Q. Where was Halsell's home?
A. His home was in Vinita, but his ranche was out there north of Tulsa, about 12 miles.
Q. Are you still in charge of his business?
A. No, sir.
Q. In business for yourself?
A. Yes, sir.
Q. Is he related to you in any way?
A. Yes, sir.
Q. How?
A. He is a brother-in-law of mine.
Q. Now, then, Mr. Halsell was in Tulsa on the same day that was written?
A. Yes, sir.
Q. Well, did you see Mr. Lewis there on that day?
A. Yes, sir.
Q. This defendant?
A. Yes, sir.
Q. Did you know him?
A. Yes, sir.
Q. You saw him there that day?
A. Yes, sir.
Q. Now then, do you remember anything about being in his company—just go on and tell what you remember about it.
A. When Mr. Lewis come?
Q. Yes, sir.
A. I met Mr. Lewis on Hall's porch.
Q. Who is Hall?
A. He is a merchant there, and about that time Mr. Halsell came up, and he introduced him to Mr. Lewis, and we stood there and talked a little while, and Mr. Lewis asked us to go in and have cigars, and we went in and got cigars, and we talked a little while, and Mr. Halsell said he would have to leave us, as he was going off on the train, and he
364 left me sitting on a box, talking to Mr. Lewis.

Q. After the train left, how long did you stay there and talk to him?
A. I think probably 30 minutes.
Q. Now, you saw him there?
A. Yes, sir.
Q. Mr. Halsell was going off on the train that day to Vinita?
A. Yes, sir.
Q. You introduced Mr. Halsell to Mr. Lewis?
A. Yes, sir.
Q. And you went in and got cigars, and Mr. Halsell left, and the train left?
A. Yes, sir.
Q. And then you sat down on that box and talked to Mr. Lewis?
A. Yes, sir.
Q. Whereabouts was it you sat down on the box and talked to him?
A. On Mr. Hall's porch.
Q. How long?
A. About 30 minutes after the train left.
Q. Do you know where you went after that?
A. I went to the hotel and got my dinner, and then went back to the ranche that evening.
Q. Do you remember whether you saw Mr. Campbell that day or not?
A. I don't think I did.
Q. Do you remember what time you left town?
A. Nom, sir; I don't; something near 12 o'clock; as soon as I got dinner.
Q. Do you usually, in that country, eat dinner before or after, or at 12?
A. Just about 12.
Q. Whose hotel did you eat dinner at?
A. At the Tulsa House.
Q. I will ask you if your attention was called to what you have just related at that time?
A. My attention was called to it after the arrest of Mr. Lewis.
365 Q. Did you make it known to the officers that you had seen Mr. Lewis there on the day of the robbery?
A. Yes, sir; I told Charlie Leflore and Heck Thomas tha' I saw Mr. Lewis there in Tulsa on the 15th, and had a talk with him.

Mr. BARNES (to the district attorney). Do you wish to cross-examine him as to this paper, before I offer it in evidence?

The DISTRICT ATTORNEY. I object to its being offered, because it does not relate to the case.

Mr. BARNES. It relates to the defendant. That was written, he says, upon the day of the occurrence, and is dated upon the same day. He tells who he wrote it for.

The DISTRICT ATTORNEY. Just show it to the court. You are taking an indirect way to get it before the jury.

Mr. B'RNES. We offer it in evidence as being written on that day by Mr. Crutchfield. (Handing paper to the court.)

The COURT. You can refresh his memory with that.

Mr. BARNES. It seems that there is another reason. There is a return of the officer upon that warrant. It has not been introduced in evidence, but it was shown to a witness upon the stand. That is relied upon to

show that Claywell was, and also the defendant, at a particular time. Now, we offer this paper, bearing the date that we claim he was under arrest and taken away from there, and we want to prove this by the man that wrote this paper.

The COURT. He can state that day as the day he saw him there. He can refresh his memory with it.

366 Mr. BARNES (to witness). You wrote that for Mr. Claywell, in his name?

A. Yes, sir.

Q. Did you do that on the 15th of June?

A. Yes, sir.

Mr. BARNES. Does the court rule that I am not to read it to the jury?

The COURT. Just read it.

Mr. BARNES. (Reading.) "Tulsa, Indian Territory, June fifteenth, 1888. Don't sell any cattle until I come back, only the two two-year-old I have sold to Bob Bynum, to pay the money I borrowed. Yours, etc., Thomas Claywell."

Cross-examination:

The DISTRICT ATTORNEY. What is your name?

A. Crutchfield.

Q. You say you can't see very well at night?

A. No, sir; not without glasses.

Q. What is the matter with your eyes?

A. Age, I suppose.

That left eye of yours; is that what is the matter with it?

A. That I got it hurt here in town since I have been here.

Q. Why?

Down here at the hotel.

Q. Get into a fight?

A. No, sir.

Q. Anybody strike you?

A. I don't deny having a little scrap down there.

Q. Then you got struck in the eye?

A. Yes, sir.

Q. Why did you say "No, sir?" Your very tone indicated that you wasn't telling me the truth.

Q. You were under oath when you said you were not struck in the eye?

A. Yes, sir

Q. Then why did you say it?

367 A. I don't think I said I wasn't struck.

Q. Then when you told me you didn't get struck you told me what was not true?

A. I don't think I told you that.

*M*Q. I think you did, and I remember it mighty well. That was an awful bad start. You was drunk and got into a fight?

A. No, sir; I wasn't drunk.

Q. Was it at the hotel?

A. Yes, sir.

Q. Down at the Pea Green Hotel?

A. No, sir.

Q. You know where that hotel is, don't you?

A. Yes, sir.

MQ. You are sure it wasn't at the Pea Green where you got that eye painted?

A. Yes, sir; I know it wasn't there.

Q. That is one of the things that makes your eyes bad. Do you remember what date you wrote that paper, except from the date of it?

A. Yes, sir; I do from other circumstances.

Q. You remember it was the 15th, independently of this paper?

A. Yes, sir.

Q. I will ask you if you haven't said to a great many people that you didn't know 99 888——

Mr. BARNES. Who are they?

Mr. CLAYTON. I will ask you if haven't said to Capt. Leflore that you didn't know anything about the date, except that it was on the date that Claywell was arrested?

A. Yes, sir; from the date of Claywell's arrest and from the date of that paper.

Q. How do you know when Claywell was arrested?

A. Well, from business transactions that I had at home.

368 I thought you said you knew nothing about it except from Claywell's arrest?

A. Yes, sir; and that paper.

Q. Did you have any talk to him about the paper?

A. Yes, sir.

Q. When?

A. Since I have been here.

Q. Did you talk to Mr. Halsell about it?

A. Yes, sir.

Q. Mr. Halsell isn't here?

A. No, sir; he was here last time.

Q. What?

A. Last May term of this court.

Q. I don't think Mr. Halsell has ever been here as a witness in this case?

A. He was here when I was here before.

Q. Now, then, where did you see this paper? It was sent to Claywell's son?

A. I suppose it was. Claywell's stepson.

Q. That paper was three years and a half ago sent to Claywell's son; it has been pretty well preserved. Do you know how it came to be kept so long?

A. I can't tell you.

Q. Did you keep it?

A. No, sir.

Q. When it got to Claywell's son, it had performed its function. Claywell went home shortly afterwards, didn't he?

A. Yes, sir; I heard he did; I am not positive about that.

Q. Didn't you see him shortly afterwards?

A. I saw him, but I don't know how long he was here, though.

Q. Now, then, when he was under arrest, he writes this note from Tulsa, Indian Territory, June 15, 1888, to Bunkie; don't sell any cattle

until I get back*m*, only the two two-year-old; I have sold to Bo*hb* Bynum, to pay the money I borrowed. Yours, etc., Thomas Claywell. Now, then, when you wrote that, what did you do with it?

A. I gave it to Mr. Claywell.

369 Q. Did he put it in an envelope?

A. I don't know.

Q. Is Mr. Claywell here?

A. No, sir.

Q. Is Bynum here?

A. No, sir.

Q. Do you know why that note was preserved?

A. No, sir.

Q. Do you know why that paper was preserved?

A. No, sir; I don't know anything about it.

Q. Is Claywell any relation to Lewis?

A. Not that I know of.

Q. Is Bynum?

A. Not that I know of.

Q. You had a talk with Bynum on that porch that day?

A. Yes, sir.

Q. I will ask you if you and he didn't have a talk about that robbery at that time?

A. No, sir.

Q. I will ask you if you didn't hear of that robbery before you left town that day?

A. No, sir.

Q. When did you and Halsell have a talk about it?

A. Well, it was several days after I heard of the robbery, because Mr. Halsell never came back to the ranch for several days, and I didn't see him any more.

Q. You say it was on Friday, the fifteenth, that you and Halsell had a talk in Tulsa?

A. Yes, sir.

Q. I will ask you if, in your talk with Halsell, you and he didn't——

Mr. BARNES. We object; Mr. Halsell is not here.

The DISTRICT ATTORNEY. I will ask you this: Do you know Charley Leflore?

A. Yes, sir.

Q. Have you talked with him about this matter since you have been here?

A. Yes, sir.

370 Q. I will ask you if you didn't speak to him since you have been here, right here in this house, that you and Halsell had a talk about this matter; and if you didn't say that the robbery had been heard of before Mr. Halsell left Tulsa upon that day that you saw these men there?

A. No, sir; I never made any such a statement.

Q. Did you talk to Leflore anyt*y*ing about a conversation between you and Halsell?

A. I talked to him about a conversation I had with Halsell after Halsell got back from the ranch.

Q. Didn't you tell Leflore that the robbery had been heard of before Halsell left Tulsa?

A. I told Captain Leflore that Halsell and I had a talk about the time of the robbery, and Halsell told me that he heard of this robbery the day that he left me there in Tulsa, and the day that Claywell was taken prisoner, and went to Vinita, and that he heard of the robbery that day.

Q. Will you explain to me how he heard of the robbery that day, when it didn't occur until 9 o'clock that night?

A. I don't know how he heard of it.

Q. It was Captain Leflore that you told this to?

A. That Halsell and I had a talk about this robbery after Halsell *hot* back to the ranch.

Q. Well, how lo*jg* had you known Lewis?

A. Up to that time?

Q. Yes, sir.

A. I don't suppose I had known him over a couple of months.

Q. He hadn't been in the country very long, had he?

A. No, sir.

Q. When did he come into the country?

A. I met him about two months before that.

Q. You met him about as soon as he come into the country?

371 A. Yes, sir; that is, when he come into the country where I was. That was my first knowledge of it.

Q. Now, Mr. Crutchfield, do*d* you know Mr. Queen?

A. Yes, sir; I met him twice.

Q. Where did you meet him?

A. I met him at a rourd-up there.

Q. Anybody with him?

A. Yes, sir; there was a good big *g*rowd with him that day.

Q. Anyone with him?

A. No, sir; not particular.

Q. Where did Queen live?

A. He lived right there, on Coal Creek.

Q. With Lewis?

A. He lived right there; I don't know whether he lived with Lewis or not.

Q. If Queen didn't live with Lewis, where did he live? In whose house?

A. I don't know whose house Queen lived in.

Q. Did you see these other robbers before the robbery?

A. If I did I didn't know them. I saw a good many men there that I didn't know.

Q. At Lewis's?

A. No, sir; there in the country. At that round-up there was two parties I didn't know.

Q. I will ask you if you didn't complain to Mr. Leflore about Mr. Lewis harboring these men?

A. I don't think I ever did.

Q. All I want is the truth?

A. That is what I am going to tell as near as I know.

Q. Didn't you talk to Leflore about Lewis harboring these horse thieves and robbers there?

A. I don't think I did. I might have said they was there, or that they had been seen there, or accused of being there, but I don't
372 think I ever made any complaint to him; I may have talked to the officer about there being there; I don't know but that I had that conversation with Captain Leflore*m*, because there was a good deal of talk of it over the country.

Q. That was *e*fore the robbery? (No response.)

Redirect examination:

Mr. BARNES. He has asked you about complaining to this man. Haven't you always assisted the officers all you could in ridding the country of outlaws?

A. Yes, sir.

Q. You have had large stock interests there?

A. Yes, sir.

Q. Did you have any disposition to shield an outlaw?

A. Not in the least.

Q. You say you had a talk with Leflore about Halsell having learned of the robery that day. Do you know wether he heard of it there, or whether he heard of it on his way to Vinita? There is a telegraph wire and railroad from there down to Fort Gibson, isn't there?

A. Yes, sir.

Q. Mr. Halsell went up to Vinita that day from Tulsa?

A. Yes, sir.

Q. Do you remember whether he said he heard of that that day or after he got to Vinita?

A. *J*y recollection is that he said he heard of it on the train, or as he went to the train that day. He thought it was another party, a friend of his, that was killed.

Q. Do you know anything of his telegraphing back there to Smiley? Did you see any telegra*j t*i Smiley about when he was to come down here on the Claywell case?

A. No, sir; I don't know about that.

Q. Has Leflore been following you around to pump you since you have been here in this case?

A. No, sir; not that I know of.

Q. Did he come to you to talk to you?

A. We have talked.

373 Q. Has he come to you since you have been put under the rule of the court; since you have been sworn?

A. We have talked about this case since then, but I don't know whether he came to me.

(Witness excused.)

374 Mr. BARNES. In order to save time we have agreed to consider the testimony of Mr. Holloman before commissioner as in evidence.

The COURT. Very well.

Mr. BARNES. I desire to offer to prove that the original indictment against Holloman, alias Jo. Foster, is still pending.

The DISTRICT ATTORNEY. I don't know whether it is or not; we can find out in the morning.

375 United States of America, western dist. of Ark. Before James Brizzolara, U. S. commissioner.

UNITED STATES } Murder.
vs.
ALEX. LEWIS. }

On this 31st day of December, 1890, came the United States, the plaintiff in this cause, and the defendant in his own proper person, in custody of the marshal, and by his attorney, J. Warren Reed, esq., when the following was heard and proceedings had, to wit:

J. T. HOLLOMAN, being duly sworn, deposes and says: I reside at Leon Co., Texas, near Rogers Prairie, and know the defendant in this cause. On or about the 15th of March, 1888, one C. E. Foster, alias Jim Johnson, came to my cousin R. T. Rogers, about one mile west of Rogers Prairie store, in Leon County, Texas, where I was living with my cousin. Johnson remained there until April 20th. On or about April first he proposed to me and my cousin to go with him to the Indian Territory, stating that we could make forty or fifty dollars a month working stock. We agreed to go if we could sell our crop. He told us that he could find a buyer for our crop. He went down to Walker County, and sent a man named Atkins up. Two days after Johnson left for Walker County, Atkins came to my cousin's house and said he was looking for a crop to buy. We told him we had one for sale, and he asked us what we asked for it.

376 We told him we would take one hundred and twenty-five or thirty-five dollars, I don't remember which, for our crop, meat, and what corn we had on hand. He took it at our price. He was to pay us when he gathered the crop. We received our pay for the crop as soon as he gathered it. Atkins did not tell me that he knew Johnson, or that Johnson had sent him to buy our crop. Johnson came back the next day after Atkins left, and he asked us if we had sold to a man named Atkins. He remarked that he was satisfied that Atkins would buy it. Several days afterward Atkins moved on our place, and we began to get ready to go *do* the Indian Territory.

On the morning of April 20th, Rogers and myself went to old man Palmer's, on the edge of Rogers Prairie, and bid him good-bye. From there we went to old man Bill Barker's and bid him good-bye. Rogers left me there and went across the Navisota River, at the San Antonio crossing, and went to Calvert, or Waco, where he sold his horse, and took the train for Pryor Creek, I. T. After Rogers left me at old man Barber's I went back to Rogers Prairie and met Johnson, and we started for the Indian Territory on horseback. We went east from Rogers Prairie and crossed the Trinity River at the Clap Ferry; turned up the Trinity River on the east side of Grapeland. We crossed the I. & G. N. Ry. between Palestine and the Trinity River. We went through Jacksonville and Tyler. From Tyler we went to Mt. Vernon. We got ½ gallon of whiskey at a distillery about 12 miles north of Mt. Vernon, and then continued on to Paris. On arriving at Red River, we could not cross, as the river was up and the ferry gone. We stopped near the river for a couple of days, and then went up to Red River, to Garretts Post-Office. River was too high to use ferryboat, but Mr. Garrett got two men to take us across the

river in a skiff, and we swam our horses. We paid 75 cents a
377 piece for being put across the river at Garretts. We went from Garretts Post-Office to Caddo, I. T. We went up the railroad track from Caddo about a mile, and then we left the railroad and took to the left, and passed through Stonewall and continued on to Ockmulgee. From Ockmulgee we went to Red Fork, and crossed the Arkansas River below the railroad bridge; went through Tulsa, and went to Alex. Lewis's house; got there about half an hour before sundown. It took us nearly a month to make the trip. Lewis was not at home when we arrived there. When we drove up to the fence, Lewis's wife came to the door, and Johnson asked her if Queen was in. She said she had not seen him. Johnson then told her to tell Queen when he came that Jim Johnson had been there inquiring for him, and that Queen would know who he was. We then went across the creek and met Queen about ¾ of a mile from Lewis's house. Johnson shook hands with Queen, and introduced him to me as Buck McKitchen, and me to him as Joe Foster. We then went back with Queen and staid all night at Lewis's house. Lewis arrived home about dusk, and Queen introduced Johnson and myself to Lewis next morning. Queen, Johnson, and myself started to old man Barber's. When we came in sight of old man Buck Dawson's house, they showed it to me, and told me to go there and stay all night, and come to old man Barber's next morning, and told me the way to go to old man Barber's was to cross the creek and then keep up the creek, and that old man Barber lived in the first house I came to. I stopped at Buck Dawson's all night, and next morning I went to old man Barber's, and Johnson and Queen were at Barber's; also old man Barber and wife; John Barber was not there. He and
Whitley were in Williamson County, Texas. When I arrived at
378 Barber's, Johnson told me that Bob (meaning my cousin Rogers) had arrived there, but had gone back to Pryor Creek, and said "you go to Pryor Creek and bring him out."

I went to Pryor Creek and met Rogers at the hotel there near the track. He told me to go back to Chelsa, and that he would take the train and go by way of Vinita and meet me there. Rogers met me at Chelsa, and we went to old man Barber's, and there we met Queen and Johnson. John Barber had not come home from Williamson County, Texas, yet. Queen and Johnson, Rogers and myself, left Barber's and went down to Lewis's; staid at Lewis's several days. We were all down at the hay pen one day, and Lewis was with us, and Johnson remarked that we were getting scarce of money, and that we were bound to get money some way. He (Johnson) then proposed to pull the M., K. & T. southbound train. Queen, Rogers, and myself agreed to go in. Old man Lewis, the defendant, then said, "Boys, I want to go too, but I have to talk to me wife, and if she is willing I will go, but if she aint willing then I won't go." Lewis then went to his house. After Lewis left Johnson said, "Well, boys, there are four of us here now, and we will play a game of seven-up to see who will catch the train" (meaning who would ride the train from the station to the tank). We then sat down and played the game. Queen and myself were partners. Queen and myself were stuck to ride the train down, and then we played a game of seven-up to see who would go into the express car. We stuck Johnson and Rogers to go through the express car. We then went into Lewis's house, and old man Lewis told us that his wife was willing for

him to go. I forgot to state that while at old man Barber's Johnson sent Rogers to Coffeyville to buy two Winchester guns. Rogers bought
379 them and delivered them to Johnson. After we went to Lewis's house and he told us that his wife was willing for him to go with us, we began to prepare for the robbery. Mrs. Lewis cooked us some bread; and I had no horse, the one I rode from Texas belonging to Rogers. Johnson told me that I could ride his, and that I could pay for him after the robbery. Queen and Johnson then went away, but returned in a couple of days with two horses; one was a paint mare and the other was a bay horse.

On the morning of June 15th, 1888, Queen, Johnson, Rogers, old man Lewis, and myself left Lewis's house for Gibson Station. Lewis went to Tulsa and took the train and went to Vinita, and was to meet us at Gibson Station about dusk on the evening of June 15th, and camped on prairie; we sent Rogers after Lewis, and he found him and brought him to our camp that evening. Next morning we went into the bottom and crossed the river, and set down and we played seven-up all day. Queen and myself were partners, and Johnson and Lewis were partners. We played for a dollar a game. Queen and myself won $30.00 from Lewis and Johnson. It was agreed between us that when Johnson, Rogers, and Lewis heard the train whistle for Gibson, they were to go up to the bridge and put every one there under arrest. Lewis was to guard the west side of the train. Lewis had a Winchester that he borrowed from Queen. Johnson had a Winchester and a pistol. The rest of us had only pistols. The kind of masks to be worn was a red handkerchief tied across the nose so as to cover the lower part of the face. About dusk Queen and myself started for Gibson Station to ride the train down to the tank.
When the train arrived at Gibson and we crossed over the train
380 to the other side, and as we crossed the train started to pull out. Queen started to run toward the engine, and I followed him; he outran me and he got on just behind the tender. When I seen him get on, I stopped running. I walked down the track after the train. When I got to the bridge the watchman spoke to me and said, "Hello, uncle, aint you afraid to be walking along here by yourself?" (I suppose he took me for a darkey.) I said I wasn't afraid, and he said you had better watch out; there was a train robbed here awhile ago. I told him they would not bother me as they would not get anything but my budget (meaning my coat, which I had tied up in my red handkerchief). I went to the bottom where we had our horses, and I found my horse tied about 20 feet from the place I had left him. The others had taken their horses and gone. I got on my horse and started for old man Lewis's house. I rode about 8 or 10 miles and then camped for the night. Next morning I started for old man Lewis's and on the way I met a number of people. I arrived at old man Lewis's about sundown that day. I found Lewis, Queen, Rogers, and Johnson there. They asked me which way I came. I told them the way I came. Johnson said to me "You got left last night." I told him, "Yes, it ran too fast for me." They then told me what they got. Johnson showed me a lady's gold watch he got, and they said they only got $8.75 in money. Queen remarked that the engineer and fireman did not know he was on until he had his pistol on them, and

that they asked him his name, and he told them his name was Buck, and they said to him, "Buck, you must have the thing down pretty fine," one man capturing the outfit.

Lewis then told what he done. He said that when the train stopped
381 the porter came running to the door, and he told him three times to get back, but the porter kept going to the door and looking out and he shot at him, and he said he thought he hit him in the arm. He said he did not know whether or not he hit anyone else, but he heard a woman scream in the car. Lewis said that he heard at Tulsa that there was a man killed at the robbery, and he remarked that he must have killed him. Johnson said, "Yes, that is what makes a man a desperado, killing a man." We left Lewis's house on the 2nd morning after the robber', and went down to Will Dawson's, Lewis going with us. We staid all that day at Will Dawson's, and that night and next day. During the last day that we staid at Dawson's, Lewis, Queen, and Johnson got into a game of poker, and just before dinner a cowboy came in and sat down and watched the game for nearly an hour and then left. There was no meat or flour in the house, and we sent Will to Tulsa to get some. When he came back he told us that Tulsa was full of marshals, and he believed that that cowboy went down and told them we were there (at Dawson's house). Dawson said he would rather we would move somewhere else, and not let them find us at his house. That evening we saddled our horses and started for old man Barber's. We rode to the edge of the bottom near old man Barber's house and camped until morning. Lewis returned home from Will Dawson's. Next morning we went up to old man Barber's and got our breakfast. John Barber was in the house, and that was the first time I had seen him. We staid around Barber's in the bottom for four or five days. John Barber staid with us. Sometimes we would go up to old man Barber's and get our meals and sometimes John Barber would bring them to us. We slept in the bottom. John
Barber and Johnson suggested that we rob the Seneca Bank
382 in the edge of Missouri. We all agreed, and Rogers and Queen were sent to look at the bank and get the lay of things. They came back in a couple of days and reported that there was plenty of money in the bank and that it could be got easy. Our plan was to ride up to the rear of the bank and hitch our horses, and then quietly enter the bank and one of us ask for change, and while the cashier was getting the change to cover him with our six-shooters.

After Rogers and Queen returned from Seneca, Missouri, we came to the conclusion that we must have good horses to get away after robbing the bank. We heard that there was to be a big time at Coffeville, Kansas, on July 4th. There was to be a big dinner, and at night a dance. So we, Queen, Rogers, and myself, started for Coffeville to steal us three good horses. Barber and Johnson had good horses. Before starting to Coffeville, and while in the bottom at Barber's, I picked up a paper at old man Barber's and seen an account of a paint mare being stolen. The owner had publsiehed her, and gave the brand, and offered a reward. I had the pain' mare, having traded with Queen for her. I at once took the mare to Verdigris River and turned her loose, and made her swim the river to the other side. While en route to Coffeyville on July 4th with Queen and Rogers we stopped on a creek 6 or 8 miles from Coffeville and

had dinner. While we were at dinner I got after Rogers to go home. I told him we had not been raised that way, and I wanted to go home, and wanted him to go with me. Queen remarked, "Now, boys, if you want to go home now is your time while you are away from Barber and Johnson." Rogers then agreed to come home. Just then a crow lit on a tree near us, and Rogers shot and killed it, and I took it and dropped some blood on my saddle. The horse I was riding belonged to Barber,
383 and Queen agreed to take it back and tell Barber and Johnson that some fellows run into us near Coffeyville, and began shooting into us, and that my horse came running back with blood all over the saddle, and he supposed I was shot. Rogers took off his saddle off his horse and turned it loose, and he hung his Winchester and saddle up in a tree. Queen then started back, and we fixed up as tramps, and started to Coffeyville. We took a train at Coffeyville and went to Monette. From Monette we went to Fort Smith. From Fort Smith we went to Paris, and from Paris to Dallas, then to Garret Station, and then home.

My cousin, Rogers, was killed shortly after we got home. He was killed by John Bell, about four miles west of Rogers Prairie store, on October 2nd, 1888. Bell was convicted and got five years in Huntsville penitentiary.

About the last of September a man named Atkins got a letter from one Barber asking if Tip Holloman and Bob Rogers had got back safe. Atkins is now living near Bryan, Texas.

The following is also a part of the commissioners papers in this case, and is the examination of Holloman:

We stationed ourselves near Gibson Station, about a quarter of a mile from Verdigris River, near the bridge across the Verdigris River. The defendant was with us at that time. There was four there besides myself. There was Lewis, Jim Johnson, Quinn, Rogers, and myself. This was the 16th day of June, 1888. We staid there and played seven-up all day until just about dusk, and Quinn and myself went to Gibson Station, and Johnson and Rogers and Lewis were to go to the bridge and capture the watchman when they heard the train blow for Gibson Station, but
384 they did not capture the watchman until the train run by. During this time I was walking down the track from Gibson Station. I could not get on the engine at Gibson Station, and I just walked down the track. Quinn got on after the train started, and I got left and had to walk back. This was after night, I suppose about an hour after dark. When I got to the river the train had been robbed and had gone on.

When I got to the bridge there were several parties there and they halted me. The other men of our crowd had gone, I suppose. They were not there. The next I saw of them was at Lewis's, the defendant, here. They were all there.

I did not hear any shots at all.

Lewis rode a dark grey horse, and I suppose he owned him. I rode a horse that belonged to Johnson; he was a kind of a roan horse, with one ear split, and a pacing horse. Rogers and Johnson were riding bay horses, and Quinn traded horses before we got there; he traded his horse for a mule. Lewis rode an iron gray horse to Tulsa and then we led his horse down to Gibson. We were all armed. Johnson had a pistol and a Winchester, and Quinn, I believe, had two pistols and a Winchester, and I had

a pistol, and Rogers had a pistol. I do not think Lewis had anything until he got to Gibson Station, and then he got a pistol and a Winchester from Quinn.

They told me afterwards that Lewis was on the west side of the train, and Rogers and Johnson were on the east side; they said that Quinn and Rogers went through the train. They said Quinn had brought the engineer out and put him in charge of Johnson.

385 I believe this was in the Cherokee Nation; I don't know whether it was in the Cherokee or Creek Nation.

Cross-examination by Mr. REED:

I think we were all there at Lewis's together sometime not far from the first of June. I staid at Lewis's most of the time after that until the 16th; part of the time I was at old man Barber's. I suppose that Lewis lived about a mile and a half or two miles from Tulsa. The 15th we started out on this robbery. On the night of the 14th we staid at Lewis's. We slept at the hay pen, about 100 yards from the house. We took our meals at Lewis's house. On the morning of the 15th we left Lewis's house, and I think about sun up. We all went off together except Lewis. Rogers carried Lewis to Tulsa, and then he came back and we all started together. He brought Lewis's horse back with him. I suppose he was gone about an hour, and then in about half an hour after he got back we all started. I suppose it was about 50 miles from there to where the robbery was committed. We went east. We carried Lewis's horse with us. He said he would go around on the train so they would not suspicion anything. We traveled nearly all day on the 15th; rested a little at noon. We camped that night I suppose about three-quarters of a mile from Gibson Station, and then Rogers went to Gibson Station and got Lewis. The robbery occur'ed about a mile from town; a mile or two. Rogers started after Lewis about dark, and got back as quick as he could ride over there and back. He took Lewis's horse and Lewis came back with him. We camped there that night. The next morning we left there, and crossed the Verdigris, and went down in the bottom. Nobody came to our camp that

386 night. We left this camp the next morning, and camped about a quarter of a mile from the railroad bridge where the robbery was committed. Lewis was in the crowd at that time. He had on tolerable good clothes. Do not know what color his pants were; he had on boots; he had on a brown striped coat, frock coat, and had on a vest. He had on a white hat.

Afterward J. T. Holloman was recalled and testified further, as follows, to wit:

Lewis had on a white hat. He had a band around it, but I don't remember whether it had red edges to it or not. I believe Rogers had on a hat of that kind.

Cross-examination:

I had on a white hat and Rogers had one, and Lewis had one, and I do not remember what kind of a hat Quinn had, and Johnson had on a black hat.

Rogers had a sandy beard. I got with the rest of the crowd the next evening after the robbery; went back to Lewis's.

387 ALEXANDER LEWIS, the defendant, sworn in his own behalf, testified as follows, to-wit:

Mr. BARNES. State your name.

A. Alexander S. Lewis.

Q. What is your age?

A. I am 48 years old. I will be 49 next month.

Q. How long have you lived up there in the Indian country?

A. I have lived there four years this fall.

Q. Where did you go from to the Indian country?

A. I went from Tom Green County, Texas.

Q. What did you go up there for?

A. My wife was a Cherokee and I went up there to establish my rights, so that my children would derive the benefit of it.

Q. Where was you born?

A. I was born in Alabama, and was raised in Texas.

Q. What business did you engage in when you went there?

A. Farming was what I considered my business.

Q. Were you ever arrested before on this charge?

A. I was arrested on the 19th day of June, 1888.

Q. Do you know what day of the week it was?

A. Tuesday, at dusk, June 18—19th, 1888, is my recollection.

Q. You was arrested once before on this charge?

A. At that time.

Q. How long were you held then?

A. I think I was held 40 days, and then turned loose by the marshal.

Q. Who had you?

A. Heck Thomas, or Captain Leflore, or Mr. Kenney; I hardly knew which one I belonged to.

388 Q. After you were turned loose, were you arrested again?

A. Yes, sir.

Q. After that was you arrested again?

A. Yes, sir; I was arrested again in the fall of 1889.

Q. How long were you held then?

A. I was held in jail four months, and then I was granted bond for $1,500.00, and my case was set for last March a year ago, and I went home and telegraphed to know if I must come then, and I received a telegram saying the case had been continued until the October term.

Q. Do you know what becamse of that case against you?

A. I was told that it was nolle prossed.

Q. You didn't come back then?

A. No, sir; not until I was arrested by Captain Leflore. I was arrested this time the 5th day of last December, and put in jail.

Q. And you have been there ever since?

A. Yes, sir.

Q. What was done with your case at the last term of court?

A. It was continued.

Q. Who continued it?

A. The Government continued it.

Q. Now then, of course, you are on trial.

Q. Now then, when did you make a contract with Mr. Baird up there to open up land, and fence, etc.?

A. It was probably in March, 1888—spring of 1888, early spring.

Q. I don't want to go into those details only sufficiently to explain everything.

Q. Now, in regard to this man Queen, when did you make a contract with him in regard to holding his cattle?

389 A. I made a contract with him in the fall of 1887 to hold his cattle for three years.

Q. How many cattle did you take charge of?

A. A little less than one hundred.

Q. Did you have any arrangement about the increase?

A. I was to have one-third of the calves.

Q. I will ask you if in the mean time Queen was around there any and staid at your house part of the time; did you propose to take charge of his cattle, or did he come to you?

A. He came to me; claimed that he wanted to go away.

Q. And wanted you to take charge of his cattle?

A. Yes, sir.

Q. Did he go away?

A. Yes, sir.

Q. When did he return?

A. He returned the spring following; he returned sooner than I expected he would return.

Q. And that was in the spring of 1888?

A. Yes, sir.

Q. Had you then made your contract with Mr. Baird?

A. I think it had been made prior to his return.

Q. It is claimed that you had in your possession two horses, an iron gray horse or blue horse, and a brown horse that afterwards turned out to have been stolen. How did you get that property and when did you get it, as near as you can recollect?

A. I don't know; it was while I was at work on the Baird farm; Queen and Will Dawson came there to the place where I was at work and proposed to sell me the horses, and I bought them from him. I told him I would take the horses provided I could get some money to pay for them.

390 Q. What price did you buy them at?

A. I took them at fifty dollars each.

Q. How much did you pay him down?

A. I paid him twenty-five dollars.

Q. Where did you get the money?

A. From Mell Baird.

Q. What time did you get them?

A. I don't know, but it was after grass got pretty good in the spring.

Q. How long was that after they brought the horses there?

A. That I bought them?

Q. Yes, sir.

A. I bought them, I think, the first day I saw them after they come to my house.

Q. How many horses did you have?

A. I suppose I had a little less than thirty.

Q. What kind of stock was it?

A. Mostly mare and colts, 9-yearlings and two years old.

Q. Well, how long did you work that team, and what became of the gray horse?

A. I worked the team pretty steadily to the plow; I bought them because my horses were too light to break sod, and I worked them steadily until he finally proposed to buy one back, the blue horse back. I didn't want to sell him, and he asked me how much I would take for him, and I told him seventy-five dollars, and he demurred at the price, but he finally agreed to take him, and I let him have the horse.

Q. Who else was around your house about that time?

A. About the time he bought the horse?

Q. Yes, sir; was there any other of the parties that have been named here?

391 A. There was four men; he introduced the three men to me, and said they were from eastern Texas, I believe.

Q. Who were the other men?

A. Jim Johnson, Jo Foster, and Sam Holloway, I believe, was the name they were introduced to me by.

Q. About how much were they around your house?

A. Queen was staying at my house, making that his home a right smart of the time, and I think the four of them staid there a few days. Queen said him and Johnson wanted to go and look around the country awhile, and Jo and Sam wanted to remain at my house, and I told them if my wife would do the cooking they could stay, and she said she could do it, and they staid.

Q. Where did these two men stay?

A. They staid right with the family.

Q. While they were all four there together did any of them sleep away from the house?

A. Well, I don't remember exactly; my recollection is, my house had two rooms to it; one of them was used for a sleeping and sitting room, and the other was used as a cooking and dining room, and there was a gallery in front, and my family slept in the house, and I think the others slept out on the gallery.

Q. Do you remember whether any of them slept around the haystacks?

A. I don't know whether they did or not.

Q. Warm weather?

A. The weather was quite warm.

Q. Was there any other horses brought there?

A. Yes, sir.

Q. You speak of Johnson and Queen going off on a trip?

A. Yes, sir; they went off, and were gone about a week and returned, and they had a paint mare and gray horse with them.

Q. What horses did they ride away?

A. I don't remember; Queen rode his own, I am satisfied, and I suppose Johnson did, too.

392 Q. Now, then, when did these men leave your house with reference to the time of the robbery—say the robbery was the 15th—*wh* when did they leave your house the last time before the robbery?

A. Well, it was about a week, late in the evening, before the robbery.

Q. Where did they go?

A. I don't know; they went off across the creek in the direction of old man Barber's; I don't know where they went.

Q. When did you next see them; when they left did they say anything about where they were going?

A. No, sir; I don't remember that they did.

Q. Now, it has been testified to here by Mr. Holloman—I won't go over all that he said, because it would take me all night—but was there ever any plot or conspiracy formed there at your house or about your place, that you had any connection with, in regard to robbing this train?

A. No, sir; never was.

Q. Did you know whether or not those horses were stolen horses?

A. No, sir; I did not.

Q. When did you first learn of their being stolen property?

A. Why, it was after I had been under arrest—which ones?

A. The gray horse, and the blue, and the brown?

A. When I was arrested I was riding the blue horse.

Q. How did you get that horse back in your possession?

A. I got him from Queen.

Q. When?

A. I suppose it was Monday after the robbery.

Q. Where?

A. At Will Dawson's.

393 Q. You have told about selling him to Queen previous to that time, and then the Monday after the robbery you bought him from Queen at the Dawson place.

A. Yes, sir.

Q. When did you learn that that blue horse was stolen property?

A. After being arrested by the deputy marshals.

Q. Did you learn of the others being stolen property?

A. Yes, sir; the paint and the brown I learned afterwards while in the marshal's camp.

Q. Were these men at your house after the time they left, about a week before the robbery, before you saw them there at Dawson's?

A. Yes, sir; they came to my house Saturday evening.

Q. How did they come?

A. I don't remember; in fact, I don't now remember whether I was at the house when they came.

Q. But they were there?

A. They were there Saturday evening.

Q. How long were they there?

A. They were there—my wife got supper for them and they went off.

Q. What time did she cook supper for them?

A. I don't remember, but I think it was a little before night.

Q. And they got supper and went off?

A. Yes, sir.

Q. Do you know where they went?

A. I saw them at Will Dawson's.

Q. Did Queen or anyone come to your house after that before you went to Dawson's?

A. I don't remember.

Q. When did you see them at Dawson's?

A. I went over there Sunday for'noon and saw them there; they were playing cards and I played cards with them.

Q. You went there when?

A. Sunday in the forenoon.

394 Q. Where did you go then?

A. I went home, and Queen asked me to come back the next day and play again, and I went back again, the next day.

Q. You did play cards sometimes yourself?

A. Yes, sir.

Q. When did you first learn of that robbery?

A. I don't remember; I think probably it was Monday. Will Dawson told it, I think. He had been to town to get some goods, and came back and brought the news.

Q. Who was in the party that you were playing with and what became of them?

A. There was Kep Queen, Jo Foster, Sam Holloway, and Jim Johnson.

Q. You heard the statement of a witness that his recollection was that Barber was there?

A. I didn't see Barber; if Barber was there I didn't see him.

Q. You don't claim that Barber was there?

A. No, sir; I don't recollect seeing him; I never had seen him before that time.

Q. If he was at the robbery you don't know it?

A. No, sir.

Q. If there were five men in the crowd at that robbery you don't know who the fifth man was?

A. No, sir.

Q. You didn't see Barber there and hadn't seen him before that time?

A. No, sir.

Q. Did you see him after that?

A. Yes, sir; he came to my house after the marshals had turned me loose.

Q. How near was this section house on the road to this Dawson house?

A. About a quarter; probably a little nearer, buy about a quarter of a mile.

395 Q. If Barber was at your house shortly after this robbery, you didn't see him at that time?

A. No, sir.

Q. You was under arrest?

A. Yes, sir.

Q. Under arrest for some time after this?

A. Yes, sir.

Q. Forty days, I believe you said?

A. Yes, sir; about forty days.

Q. Did you or your wife have anything to do with furnishing provisions to that crowd of men to go off on any expedition?

A. Well, I didn't know anything where they were going. When they got ready to start Queen might have had my wife cook up something for the'; I don't know anything about that; I don't know whether he did or not.

Q. You say you never entered into any plot at the haystacks, or any place else, to go into any scheme to rob this train?

A. No, sir.

Q. Where was you about the time of this train robbery, with reference to the different dates along there; where was you, for instance, on Thursday of the week before you was arrested?

A. Well, to make the thing plain, I had a contract to do some work for Mr. Baird, and I wasn't making anything out of it, and I was trying to rescind the contract so I wouldn't lose anything out of it, and I was almost continuously at town to see him all the time. He had a good deal of business, and sometimes we could transact business, and sometimes we could not, and just prior to this thing we had just rescinded the contract.

Q. Now, do you know when Tom Claywell was arrested?

396 A. Yes, sir; he was arrested June 15, 1888.

Q. Where was you the day before that?

A. I went down to Baird's farm, and then went back up there to see Baird again.

Q. Do you know this man Henson?

A. Yes, sir.

Q. Did you see him?

A. I was at his and his mother's house.

Q. Where did you go after you was at their house?

A. Mr. Baird had told me that there would be a man there Thursday that would take the contract for me, and I told him to let him have it inside of my figures if he could, and if not, to make a new contract; and I went to Henson's house, and he wasn't there, and then I went to see if *me* was at my house, and then I went back to town to see Mr. Baird.

Q. Where was you the next day?

A. I didn't get to do business with Mr. Baird that day, and I was in town to see him again.

Q. What did you do that day and who did you see, as near as you can remember?

A. I think I saw most everybody in Tulsa that day. I was introduced to Mr. Halsell for one; I was introduced to him by Mr. Crutchfield; he introduced him to me on Hall's porch, and I asked them to come in and have a smoke, and we got some cigars and smoked.

Q. What became of Mr. Halsell?

A. I don't know; I suppose he went off on the train.

Q. After that what became of Mr. Crutchfield?

A. Mr. Crutchfield and I stood there and talked.

Q. Did you see Mr. Morris on that day?

397 A. Yes, sir; he had been trying to get some oxen from me, and I din't really want to part with them, and he wanted me to sell them.

Q. Did you learn anything about him wanting to see you?

A. My wife told me he had been there, and left word for me to go to town the next day.

. Did you see him there?

A. Yes, sir.

Q. Did you or not trade with him him?

A. No, sir.

Q. What sort of an animal did you ride that day?
A. I was riding a gray mare.
Q. Did you do any trading there that day?
A. Yes, sir; I bought some goods of R. M. Bynums; bought it from Mr. Smiley.
Q. Do you remember what it was?
A. Well, I don't remember. To the best of my recollection I remember getting a guage wheel.
Q. What was the guage wheel for?
A. It was to work on the front end of my sod plow.
Q. You remember getting that yourself?
A. Yes, sir; I remember getting it; I took it home.
Q. Can you remember any of the other parties you saw in town that day?
A. I probably saw Mr. Biard, because I went there to see him.
Q. Where did you see him if you saw that day?
A. I saw him in his office.
Q. What time of day?
A. It was in the afternoon; I don't remember just what time.
Q. Well, you saw him in the afternoon in his office, but you don't remember what time?
A. No, sir.
Q. You had been there to see him one day before, too?
A. Yes, sir.
398 Q. After you had been to these other places you speak of?
A. Yes, sir.
Q. Do you know what time in the evening, or afternoon, you left town to go home?
A. It was pretty late; I don't remember just what time. I think it was late in the evening.
Q. What day was that?
A. That was Friday, June 15, 1888.
Q. Do you remember what time of day you went to town?
A. I went there in the forenoon.
Q. Can you tell what time in the day you got there?
A. No, sir; I suppose about ten o'clock.
Q. Where were you on the next day, June 16th?
A. On Saturday?
Q. Yes, sir.
A. I was about my place there.
Q. Did you go to town that day?
A. I don't remember that I did. I don't think I did.
Q. After you was arrested did you see Mr. Smiley?
A. Yes, sir.
Q. Did you have any talk with him about your arrest?
A. Yes, sir; I asked him to look over the books and see the bill of goods I bought, and for him to charge his memory with it particularly.
Q. You called his attention to it?
A. Yes, sir.
Q. That you were charged with being with this crowd of men on the 15th, while in that robbery?

A. Yes, sir.
Q. And you told him to see if you did't buy a bill of goods there?
A. Yes, sir; and to charge his memory with it particularly.
Q. You did that while you was under arrest?
A. Yes, sir.

(Here court adjourned until to-morrow morning, Oct. 24, 1891, at 8.30, a. m.)

399 SATURDAY MORNING, *October 24th*, 1891—8:50 *a. m.*

ALEXANDER LEWIS, the defendant, on the stand.

Examination continued by Mr. BARNES:

Q. Where was it you saw Mr. Smiley?
A. At the marshal's camp.
Q. Well, I will ask you whether or not at the time it is claimed this robbery occurred, if you were away from home?
A. No, sir; nowhere, except around in the country tending to my business, on the farm and at Tulsa and other places there, tending to my business.
Q. You have heard the statement of Mr. Foster, alias Holloman, as to your being present there and connected with this train robbery and killing. I will ask you if you was there?
A. No, sir; I was not.
Q. I will ask you if after this occur'ence you had any such talk with him, in which you spoke of shooting, and how you had shot at the porter, and how the porter kept dodging his head?
A. No, sir; I did not.
Q. How did you wear your beard at that time?
A. I wore a full set of beard; my beard was very heavy. I don't usually shave any part of my face. My beard on my chin, like it is now, is shorter than the beard on my face.
Q. When did you shave your face?
A. Since I have been in jail.
Q. Why did you shave it?
A. Why, there are so many men over there that are lousy, and it is almost impossible to keep rid of lice, and I had to shave to keep myself clean.

400 Q. Now there has been something said here about speaking gibberish or Spanish at that robbery. Do you speak Spanish?
A. I understand and speak Spanish a little.
Q. Do you whether these other parties could talk Spanish?
A. I know that Queen could speak it, but I don't know about the others. Most all Texas men, and especially stockmen in Western Texas, speak more or less Spanish.
Q. Do you know whether Queen and Johnson had ever come from western Texas.
A. Johnson has told me about having worked on a ranch in western Texas, and Queen was raised in western Texas.
Q. And these other men were from Texas?

A. They told me they were from Texas.

Q. You say most all of these men can speak Spanish?

A. Yes, sir; especially stockmen and cow punchers.

Q. What relation was there, if any, between you and Queen and some of these Barbers?

A. Well, Queen's father is my wife's uncle, and Queen's mother is a cousin of my wife. On her mother's side they were cousins, and on his father's side they would be second cousins. Mrs. Barber and Queen's mother were sisters, and consequently Mrs. Barber and my wife would be second cousins. I don't think I am mistaken about the relationship.

Q. None of them were related to you?

A. None of them were related to me.

Q. This note that has been spoken of. It is the note that was signed by your sons. Just tell the circumstances of it.

A. Well, my oldest son claimed a gray mare, and had bred her in the spring, and I sold the blue horse back to Queen after first buying him, and put the gray horse in the sod team, as she worked a little better than some of the others, and my son complained about it, and said I ought to let him have some of the others, and he was breaking a colt that he liked pretty well—two-year-old colt, and he told me that he wanted me
401 to let him have the colt, and I said he could have it for fifteen dollars, and he said he didn't have any money, and I told him I would take his note if Carl would go his security, and so I drew up the note, and I didn't know the day of the month, and Mr. Hasty volunteered to get his almanac, and he did so, and told us it was the 16th.

Q. Was the note all written and signed at the same time?

A. Yes, sir.

Q. This matter of Mr. Claywell's arrest and that note, I suppose you found that through your attorneys?

A. Yes, sir; I had my attorneys to write and see if they could fix the date of Claywell's arrest in Tulsa, and they sent that note.

Q. Mr. Claywell is dead now?

A. Yes, sir; I am told that he is dead.

Q. You heard Mr. Hastie's statement here about his having two talks with you while he was under arrest. The second time he talked to you did you have any such talk as he has detailed?

A. I can give you the substance of the talk. He came there, I think, with Mr. Jones or McChristian and some one else, I don't remember who. He came to me and wanted to know what I was going to do. He said I was in trouble, and he didn't know what to do, and I told him I didn't know what to do either, and I told him I thought I would fix and pay him what I owed him, and he said if I got in trouble would I need him to acquit myself before the court, and I told him I didn't think I would. I did'nt want anything more to do with him.

Q. Why was that?

A. I had been informed that he was trying to get the marshals to pay him, or trying to get my wife to pay him. And I told him I had no more use for him, and didn't want anything to do with him.

Q. That is the talk you had?

A. Yes, sir.

402 Cross-examination:

The DISTRICT ATTORNEY. I don't intend to ask you many questions, and I want you to answer me promptly. You say you are 48 years old?

A. Yes, sir.

Q. And you come to the Indian country four years ago?

A. About four years ago.

Q. What time in the fall?

A. I think it was in November.

Q. What time in November?

A. I don't know. I don't recollect certain it was in November, but I think it was.

Q. You had been in the country about seven months at the time of the robbery?

A. About.

Q. You seem to have made a good many papers and had a great many accounts, and been at a great many places where transactions were put on paper on that day. Was that an unusual occurrence to have three or four papers showing a date?

A. I had no particular statements.

Q. Was it a usual occurrence for you to have so many transactions around the country?

A. I can not say that it was.

Q. You are not a rich man?

A. No, sir; I am a poor man.

Q. I want to know why you had so many transactions on that day?

A. I can tell you why if you wish.

Q. Well, tell how it was.

A. I have tried to get everything together since this occurrence, because this charge has been hanging over me ever since.

Q. Have you anything to show what you did upon the 14th? I notice in your application for witnesses you say, "By J. M. Crutchfield and J. W. E. Halsell defendant can prove that they were in Tulsa on June 16, 1888."

A. Well, I didn't remember the date. I will state this: My attorneys came down with the application and read it over to me. They just read it over to me and I supposed they had it right.

Q. When did you get this little note from Claywell?

A. I never——

403 Q. Didn't your attorneys get it at the last term of court?

A. I don't know, sir.

Q. Is it possible that you haven't seen it before?

A. Well, it is a fact.

Q. That note is dated the 15th. If that note was here the last term of court it showed the date, didn't it?

A. If it did I never saw it. I didn't even know the shape it was in; I never saw it.

Q. I will ask you if you didn't put that date the 16th because it was thought for a long time that that was the day of the robbery?

A. Well, I will just say that I have said all along that this occurrence was on the 15th.

Q. I will ask you if you signed this: "By the said Andrew Henson he can prove that he saw him at his mother's on the 15th of June, 1888, near Tulsa."

A. Well, my attorneys wrote that up, and I signed it.

Q. You was preparing yourself to show where you was on the 16th?

A. I wanted of course to show where I was on the 15th and 16th.

Q. You wanted to show you was at Henson's house on the 15th, and he swears you was there on the 14th. You wanted to show by Crutchfield and Halsell that they saw you on the 16th?

A. Well, I will state that I never thought these applications amounted to anything, except just a form by which the Government would allow a man witnesses.

Q. Well, that note is dated the 16th?

A. That was the 16th; yes, sir.

Q. Now, then, in this application you say these men saw you on the 16th, and that that was the day of the killing? In the same application you say that this note was given on the 16th.

A. I have always thought that the note was given on the 16th.

404 Q. In your application you fix the 16th as being the date of the killing. Now, let me read what you say: "By J. W. Crutchfield and W. E. Halsell, defendant, can prove that they were in his company at Tulsa at noon on June 16, 1888, the alleged day of the said killing."

A. Well, as I said, I thought the application a matter of form.

Q. Do you think the oath you have taken here to tell the truth a matter of form?

A. No, sir.

Q. Do you think the oath you made to this application a matter of form?

A. I think it was a matter of form in regard to this trial.

Q. How do you account for the change from the 15th to the 16th?

A. I can only account for it as a mistake.

Q. How do you account for that change from the 15th to the 16th on the bottom of the note, after you had looked at the almanac?

A. I don't know how that occurred.

Q. Now, then, here is another application for Mr. Morris, sworn to by you. "By W. L. Morris, defendant, can prove that on the 16th day of June he applied to defendant at Tulsa, who had charge of a considerable job of fencing and land breaking for Mell Baird, under said lease, and by these things defendant can show he was in Tulsa on said day." You swear to that?

A. Yes, sir.

Q. The old indictment against you charged that this offence was committed on the 16th?

A. Yes, sir.

Q. You was prepared to meet the 16th?

A. I never have thought that I had to meet the 16th.

Then why did you swear that the 16th was the day of the murder?

A. I think that is the way the attorneys wrote it up.

Q. If it had turned out that the killing was on the 16th, you would have been all right, wouldn't you?

A. I don't think I would have been as well as I am now.

Q. You told Mr. Barnes yesterday that Mr. Morris's business
405 with you was to buy a cow?

A. I believe I did.

Q. And yet in your application, you say that his business was to get a job of work.

A. Well, I have always understood from my attorneys that I need not disclose my defence any further than was necessary.

Q. You didn't state what the witness would prove; on the contrary, you give a different reason.

A. Well, at the time this application was made I supposed Morris would remember about the work, and I had forgotten about the cow, and didn't remember it until he called my attention to it.

Q. What harm would it have done for you to have mentioned the cow if he was trying to buy a cow?

A. My experience.

Q. Where did you ever have any experience?

A. I am getting it now.

Q. What harm would it have done for you to tell the truth about the matter?

A. It might been just as well; but as I tell you I had forgotten about the cow, and he said he remembered distinctly seeing me there. I supposed he would remember about this job of work I was trying to let him.

Q. Very well; that is the reason you give. You knew that this note was dated the 16th?

A. Yes, sir.

Q. Then if you knew the note was dated the 16th, and that you saw Crutchfield and Clawell and these other parties the day before, you knew that you saw Mr. Crutchfield the day before the note was written?

A. Yes, sir.

Q. Then why did you put them both the same day?

A. I told you I didn't prepare the papers; they brought the applications to me and I signed them.

Q. You gave them the information?

A. The information I gave my attorneys was that I believed this occurrence occurred on the 15th, and that this note would show that
406 I was at home on the night of the 16th.

Q. Then why did you put them both on the same day?

A. I told you they prepared the applications.

Q. There was never any question but what you was at home on the night of the 16th. Our own proof shows that.

A. Yes, sir.

Q. Now, sir, you admit that these parties, Queen and these other men, came to your house Saturday evening and got supper, late in the evening?

A. Yes, sir.

Q. How long after supper did they remain?

A. I don't remember; not long.

Q. You hadn't heard of the robbery yet, had you?

A. No, sir.

Q. There wasn't five of them?

A. No, sir.

Q. What became of the fifth man?

A. I didn't know there was five.

Q. Unless you was the fifth man, he wasn't there. Four men came to your house and got supper?

A. Yes, sir.

Q. It wasn't until after these four robbers left your house that it became important to have a date?

A. No, sir; we had nothing to do with the robbery; knew nothing about the robbery or the occurrence.

Q. But upon that night that these men left you and went to Dawson's house, according to your statement, the night that they left your house, this paper was executed?

A. Yes, sir.

Q. How long after dark was it that they left?

A. I think they left before dark.

Q. Was this writing done after dark?

A. I think it was.

Q. Why didn't you wait until Sunday morning? I suppose you didn't want to get your children in the habit of doing business on Sunday?

A. No, sir.

Q. What was the necessity of that being done so hastily?

A. My recollection is that the boy wanted to buy the colt, and proposed it that night, and that I sold it to him then and there.

407 Q. At any rate, whatever was the motive, it was executed between the time these men left there that night and the time you went to bed?

A. Yes, sir.

Q. Have you any paper that was signed that day besides this?

A. I don't remember.

Q. Have you any that was signed the 16th?

A. I don't remember.

Q. Have you any signed the day before?

A. None that I know of.

Q. Well, you went to Dawson's Sunday morning and found them there?

A. Yes, sir.

Q. What did you go for?

A. I went to see Will Dawson.

Q. You went, not knowing they were there?

A. No, sir; I didn't know; I supposed they were there.

Q. You went Monday, knowing they were there?

A. Yes, sir.

Q. You have heard the testimony that Queen and some others came over and invieted you over. When was that?

A. I don't remember that they came.

Q. Do you deny what has been said about it? You said you went over there without Queen.

A. My recollection is that I went over without any invitation from Queen or anybody.

Q. You say Queen didn't come there?

A. I say I don't think he did; at least if he did I don't remember it. He might have come, but I don't re'ember it.
Q. Where did you get dinner Sunday?
A. I don't know. I might have got dinner before I left home.
Q. What game of cards were you playing?
A. Poker.
Q. That is a game you play with cards?
A. Yes, sir.
Q. Did you ha'e chips?
A. No, sir.
Q. What did you play with?
A. I think we played with silver.
Q. Didn't you play with some gold?
A. Yes, sir; we had some gold on the table, I believe, too.
Q. Do you know where that gold came from?
A. Yes, sir.
Q. Don't you know that the gold was taken from the Cisco Bank?
408 Q. What kind of gold pieces?
A. 20-dollar gold pieces.
Q. Of course if they put up 20-dollar gold pieces you had something to put up against it?
A. I had some silver.
Q. Who beat?
A. I beat the game.
Q. You went back again Monday?
A. Yes, sir.
Q. Seemed to be pretty thick?
A. Well, not very.
Q. Do you remember of Dawson coming there and telling you he had been over at Tulsa and that the town was full of marshals?
A. Must have been half a day.
Q. Wasn't afraid of the marshals?
A. I wasn't.
Q. What time did Dawson go to Tulsa?
A. He was gone when I got there.
Q. When did he go, Sunday or Monday?
A. Monday.
Q. What did he go to Tulsa for?
A. I don't know.
Q. What time did he get back?
A. I think between one and two o'clock.
Q. Did he say anything about the train robbery?
A. I believe he did.
Q. You know whether he did or not?
A. My recollection is he did.
Q. What did he say?
A. I don't recollect; just something about the robbery.
Q. He did mention the fact that the town was full of marshals, and you think he said something about the robbery?
A. Yes, sir.
Q. Where did you go when you left that evening?

A. I went home.

Q. Were you in the habit of going over to Dawson's to play cards?

A. No, sir.

Q. Was that the first time you were ever with these men playing cards?

A. Yes, sir.

Q. Well, we will leave that and go to the horses. This gray horse you got from Queen before thre robbery?

A. Yes, sir.

Q. How long before?

409 A. I suppose probably a month and a half or two months.

Q. How long before the robbery was it you sold it back to him?

A. About a week or ten days.

Q. Did he pay you anything for it?

A. No, sir.

Q. How long after the robbery untill you got him back?

A. I think I got him back Monday after the robbery.

Q. Well, that is very strange. Here is a horse that we know was at the robbery; it was a stolen horse; it had your brand on it. What was Queen's brand?

A. I think it was K. E. P.

Q. Did 't have his brand on it?

A. No, sir.

Q. You was arrested on this stolen horse?

A. Yes, sir.

Q. What time?

A. Late Tuesday evening; I think it was between Sundown and dark.

Q. What had become of these robbers?

A. I don't know, sir.

Q. Where did they go?

A. I don't know; I left Dawson's before they did.

Q. Where had you been when you were arrested?

A. I had been over on the forks of the creek to see about buying a place.

Q. Where were you Saturday?

A. I was at Tulsa.

Q. Did you get home before these men got there?

A. I was at home when they got there.

Q. Did you hear of the robbery on Saturday at Tulsa?

A. No, sir.

Q. When did you first hear of it?

A. When Dawson came home on Monday.

Q. When he told you that did you think those men might be the robbers?

A. Well, I thought probably there might be such a thing.

Q. Well, if you suspected that, then Dawson did tell you there had been a robbery?

A. Well, I don't know whether he did or not.

Q. You know if you suspected the men of being the robbers Dawson must have said something about a robbery?

410 A. Well, I have been over this so often that I have got a little mixed. I suspected them afterwards, if I didn't then.

Q. Did you know this old lady who has testified here, two or three years before the robbery?

A. No, sir.

Q. How long was you there before you made her acquaintance?

A. I suppose probably four or five months.

Q. Was Halsell here at the last term of court?

A. No, sir; I think not.

Q. You think not?

A. I think not.

Q. When was he here?

A. I don't know.

Q. You admit that Hastie was working for you at the time of this robbery?

A. Yes, sir.

Q. And you admit that this man Holloman was at your house before the robbery?

A. I admit that Jo Foster was there, and I think that is the same man.

Q. You was arrested once and turned loose?

A. Yes, sir.

Q. Where were you turned loose?

A. At Tulsa.

Q. I will ask you if there wasn't an arrangement made when you were allowed to get away by which you were to give this thing away?

A. There was an understanding by which I was to help arrest these four men.

Mr. BARNES. It was known that these men were around your house, and you were allowed to escape with the understanding that you were to do what you could to help arrest the rest?

A. Yes, sir.

Q. You were kept by Thomas for 40 days?

A. Yes, sir.

Q. And then you were arrested again?

A. Yes, sir.

Q. And the case nolle prossed?

A. Yes, sir.

Q. And then you was arrested again and have been in jail ever since?

A. Yes, sir.

411 I. M. DODGE, having been duly sworn upon behalf of the defendant, was examined by Mr. Thos. H. Barnes, and testified as follows, to wit:

Question. Please state the names of the parties who are indicted on the original indictment in this case?

The DISTRICT ATTORNEY. The indictment will show that.

Mr. BARNES. (Of counsel for defendant). I will ask you if you will examine the record to see if the indictment is still pending against Joe Foster?

A. Yes, sir; it is, I think; I do not find anything to the contrary.

Q. But it is nol. pros. as to Dawson and Lewis?

A. Yes, sir.

The DISTRICT ATTORNEY. Is it nol. pros. as to anybody else?

A. No, sir; I think not.

Mr. BARNES (of counsel for defendant). Have you examined the record to see about that?

A. I believe it was all done at the same time.

Q. Was the case against Oscar Coulter nol. pros. at the same time.

A. Yes, sir; I think so.

Q. Nol. pros. as to Dawson also?

A. Yes, sir. I can get the original indictment. (Witness produces indictment.) On the 14th day of July nol. pros. as to Lewis and W. A. Dawson and Oscar Coulter; the death of Kep Queen and John Dawson suggested and prosecution abated as to them.

Q. Are they pending as to the others?

A. Yes, sir.

Defense rests.

412 Whereupon the Government produced and examined in rebuttal the following named witnesses, and in connection with their testimony introduced the following named court papers, to wit: I. M. Dodge, S. A. Williams, writ for Thomas Claywell, subpœna in the same case, marshal's account in same case, Heck Thomas Lewis McHenry (recalled), M. R. Mills (recalled), Charlie Le Flore (recalled), first application for witnesses, (February 9, 1891), L. P. Isabel, whose name was not endorsed as a witness upon the indictment against defendant, and of the intention to use whom as a witness defendant had no previous notice, but to which he at the time made no objection.

Said witnesses testified respectively as follows and said court papers were respectively as follows, to wit:

413 *Testimony offered by the Government in rebuttal.*

I. M. DODGE, having been recalled upon part of the Government, was examined by the District Attorney, and testified as follows, to wit:

Question. You are deputy clerk here?

A. Yes, sir.

Q. Examine these papers, and say if they are record of this court or not?

A. Yes, sir; they were issued out of the commissioner's office, I believe, and of this court now.

Q. And this, also [handing witness a paper]?

A. Yes, sir; that is on file in the clerk's office.

Q. What is this paper?

A. It purports to be a writ for the arrest of Tom Claywell, dated 12th of June, 1888; and this, also, is a subpœna in the same case, dated the same date.

Q. What is this?

A. That is a paper purporting to be the account of L. P. Isbell, sworn to on the 4th day of July, 1888.

414 S. A. WILLIAMS, having been duly sworn upon behalf of the United States in rebuttal, was examined by the district attorney, and testified as follows, to wit:

Question. Do you know L. P. Isbell?

A. Yes, sir.

Q. Please state if he were a deputy marshal in 1888.

A. Yes, sir.

Q. Do you know his handwriting?

A. Yes, sir; I think so.

Q. Examine these papers and see if the return to the writ for the arrest of Tom Claywell and the subpœna in that case is in his handwriting.

A. Yes, sir.

Q. Examine this account and see if that is in his hand writing.

A. I do not think the body of the account is, but the signature is.

Q. Do you know Mr. Dodge, deputy clerk?

A. Yes, sir.

Q. Is that his signature?

A. No, sir; that was done by Ed. Haglin.

Q. He was deputy clerk then?

A. Yes, sir.

Cross-examination by Mr. T. H. BARNES:

Q. Were you in the marshal's office in 1888?

A. No, sir.

Q. You were not a clerk in the marshal's office at the time that this account was made out?

A. No, sir.

Q. You do not know whether the writ and subpœna were mailed to him or how he got possession of them?

A. No, sir; I do not.

415 Q. I will ask you if writs and subpœnas are not frequently issued on telegrams and sent to the officer while they are in camp?

A. Sometimes they are before they come in, and sometimes afterwards, but ordinarily before they come in.

Q. You do not know how many prisoners Mr. Isbell had on that trip, do you?

A. No, sir; I do not.

Q. Do they fill out and make these accounts and return them after they have been out on long trips?

A. I think they set down a memorandum of their return.

Q. Do they not often do that right in your office?

A. The account is always made out from the return.

Q. Do they not often set down and take out a lot of papers after they come in from these long trips, and make out their accounts?

A. Yes, sir; the account is made out right then.

Q. What mileage are the deputies allowed for serving these subpœnas or these papers?

A. He is allowed mileage to the furthest point; sometimes he goes out in one direction and then in another, but he is allowed for what he actually travels.

416 The DISTRICT ATTORNEY. I will now introduce in evidence the writ in the case of the U. S. v. Tom Claywell, with its return, and read the same to the jury. The same is dated 12th of June, and return of arrest made on the 17th of June, 1888.

The writ above referred to is as follows:

417 UNITED STATES OF AMERICA,
Western Dist. of Arkansas.

The President of the United States of America, to the marshal of the western district of Arkansas, greeting:

Whereas complain' on oath hath been made before me charging that Tom Claywell did on or about the 15th day of May, A. D. 1888, in the Indian country, western district of Arkansas, commit the crime of larceny, contrary to the for' of the statute in such cases made and provided and against the peace and dignity of the United States.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Tom Claywell, and bring his body forthwith before me, Stephen Wheeler, commissioner, appointed by the United States court for said district, whenever he may be found, that he may be then and there dealt*h* with according to law for said offense.

Given under my hand this 12th day of June, 1888, in the one hundred and twelfth year of our Independence.

(Signed.) STEPHEN WHEELER,
Commissioner U. S. District Court, Western District of Arkansas.

On the back of said writ appears the following: United States versus Tom Claywell, larceny. Capias. Issued June 12, 1888. Returnable forthwith.

OFFICE UNITED STATES MARSHAL,
Western District of Arkansas:

418 I certify that I served the within writ of arrest on the 17th day of June, 1888, at the Birch Creek, twelve miles north of Tulsa, by then and there taking into my custody the within named Tom Claywell, whose body I now have before Stephen Wheeler, esq., U. S. Commissioner.

(Signed.) JOHN CARROL,
U. S. Marshal.
By L. P. ISBELL,
Deputy.

419 The DISTRICT ATTORNEY. I will now introduce in evidence the subpœna in the case of U. S. v. Tom Claywell, and read the same to the jury.

The subpœna above referred to is as follows:

420 The President of the United States, to Louis Scott, Joseph Moberly, Emmett Smiley, Wm. Jones, and Johnny Newman, greeting:

We command you, that all and singular business and excuses beind laid aside, you and each of you appear and attend before the commissioner of

the United States of America for the western district of Arkansas, at an examination to be held at his office, in Fort Smith, Arkansas, forthwith, to testify and give evidence in a certain cause pending, and then and there to be tried, between the United States of America and Tom Claywell, and defend on the part of the United States.

And this you or any of you are not to omit upon the penalty upon you and every one of you of two hundred and fifty dollars.

Witness my hand, at Fort Smith, the 12th day of June, in the year of our Lord one thousand eight hundred and eighty-eight.

(Signed) STEPHEN WHEELER,
Commissioner U. S. Court, West. Dist. Ark.

On the back of this subpœna appears the following: United States versus Tom Claywell. Larceny. Subpœna. Issued Jun. 12th, 1888. Returnable forthwith.

OFFICE OF U. S. MARSHAL, WESTERN DIST. ARKANSAS,
Ft. Smith, Ark., ———, 1888.

I certify that I served the within writ of subpœna on the 18th day of June, by then and there reading the same in the presence and hearing of the within-named Louis Scott, Joseph Moberly, Emmett Smiley.

(Signed) JOHN CARROL,
U. S. Marshal.
By L. P. ISBELL,
Deputy.

421 The DISTRICT ATTORNEY. I will now introduce in evidence Mr. Isbell's account, which is as follows, to wit:

The above-mentioned account was read in evidence, but was not taken down by the stenographer at the time, and it has since been mislaid and can not be found.

It showed the arrest to have been made on the same day that return on writ shows it.

S. WHEELER, *Clk.*
By J. M. DODGE, *D. C.*

422 HECK THOMAS, having been duly sworn upon behalf of the United States, in rebuttal, was examined by the district attorney and testified as follows, to-wit:

Question. You are a deputy marshal, and your name is Heck Thomas?
A. Yes, sir.
Q. Please state if you were a deputy marshal in 1888?
A. Yes, sir.
Q. Did you arrest the defendant the first time he was arrested?
A. Yes, sir.
Q. Do you know Bill Jones?
A. Yes, sir.
Q. Did you see him at the time you had the defendant arrested?
A. Yes, sir; I saw him at Tulsa, I. T.
Q. Please state if he ever gave you a letter purporting to come from a man named Hastie to give to this defendant?

A. No, sir—from Hastie to Mr. Lewis?
Q. Yes, sir?
A. No, sir.
Q. Did he give you a letter purporting to come from Mr. Hastie to you?
A. I am not certain about that. He came to me and told me that his life was in danger, and wanted me to give him a paper to authorize him to carry arms, but I think he (Hastie) came to me personally.
Q. If you ever got such a letter have you got it?
A. No, sir.
Q. I will ask you if you ever got a letter asking you to give an interview between Jones and the defendant?
A. No, sir.
Q. Did he come to you with such a letter and you tell him you would take him down to the camp in your buggy when you came back,
423 but fail to come back?
A. I never did sir; I never had any buggy.
Q. I will ask you if you ever made any offer to Hastie or anybody else of $250.00, or any other amount, to swear against the defendant?
A. No, sir; I never did.
Q. Have you any knowledge of any such thing being done?
A. Why, of course there never was.
Q. Do you know Burril Cox's wife?
A. Yes, sir.
Q. Please state if she ever told you, or Charley Le Flore in your presence, that she had seen five men on the day after the robbery between a couple of mountains, or anywhere else?
Mr. BARNES (of counsel for defendant). She never swore she did.
The DISTRICT ATTORNEY. May be it was Leflore she said she told it to. (To the witness). Do you remember whether she came down to your camp while Lewis was under arrest?
A. No, sir; I do not remember.
Q. Please state if she did whether she made any such statement?
A. No, sir; if she did I did not hear it. I did not stay at the camp all the time.

Cross-examination by Mr. BARNES:

Q. You were around town and out at the camp both?
A. Yes, sir.
Q. Did you have a buggy there riding around?
A. No, sir; I was in Dr. N's—— buggy.
Q. You will not state that you never had any such a conversa-
424 tion as the district attorney has asked you about, that is that a man came to you and wanted to go down and see Lewis?
A. Why, he could have seen me without making such a request as that.
Q. You were in charge of him, were you not?
A. No, sir; I was making the trip in partnership with a man.
Q. You do not know how the people around regarded that, do you?
A. Oh, they did not stay around the marshal's camp very much.
Q. Burril Cox was in your employ about this time, was he not?
A. He was assisting me some.

Q. Do you board at his house when you are up there?
A. Yes, sir.

425 LEWIS MCHENRY, recalled on behalf of Government.

Mr. CLAYTON. You are the gentlemen who testified that you were the district clerk?
A. Yes, sir.
Q. And that you saw five men riding on the prairie?
A. Yes, sir.
Q. Do you know W. R. Mills that was here?
A. No, sir.
Q. Mr. Bailiff, have him step to the door, please. (Mr. Mills steps in to court room.) (To witness.) Do you know that gentleman?
A. I have seen him since I have been here.
Q. I will ask you if you saw him last Tuesday night, near the Globe saloon here in Fort Smith, and had a talk with him about what you knew?
A. No; I don't know as I did.
Q. I will ask you if at that time and place, in talking to him about the matter, you didn't tell him that you had seen, but four men, instead of five?
A. No, sir; not as I know of.
Q. I will ask you if you didn't tell him that, and if it isn't really true that you only saw four men.
A. I saw five men.
Q. You deny telling him that?
A. I don't know whether I told him that or not.
Q. If you did tell him, what did you tell him for?
A. I don't know whether I told him.

Cross-examination:

Mr. BARNES. You saw me when you first came here, didn't you?
A. Yes, sir.
Q. Did I tell you then that there was detectives here, spying on the witnesses, and if anybody come to you, not to give them any satisfaction, and to be careful who you talked to?
A. Yes, sir.
Q. Now, if you had any talk with anybody, it was after that?
A. Yes, sir.
Mr. CLAYTON. Mr. Barnes didn't tell you to lie about it, did he?
A. No, sir.
426 Q. If he told you not to talk, did you disobey his order?
A. When I was talking I did.
Q. What are you gaping about?
A. Just because I want to.
Q. You won't deny that you made the statement, and Mr. Barnes didn't tell you to lie about it. You can stand aside.
(Witness excused.)

427 W. R. MILLS recalled on behalf of Government.

Mr. CLAYON. What is you name?
A. William R. Mills.
Q. I believe you was on the stand the other day?

A. Yes, sir.
Q. Do you know this man McHenry?
A. I never met him until I was here.
Q. Did you see him last Tuesday night?
A. Yes, sir.
Q. Where did you see him?
A. Down on the street, near the Globe saloon.
Q. Did you have a talk with him about how many men he saw on the prairie?
A. Yes, sir; he said he saw four men.
Q. Did he saw how many of them he knew?
A. He said he didn't know but one.
Q. Who?
A. Jim Johnson.

Cross-examination:

Mr. BARNES. Did he tell you one of them was riding a spotted horse?
A. He didn't say anything about it.
Q. Was you drunk?
A. He was.
Q. Was you?
A. No, sir; I had had a dram.
Q. Are you an Indian?
A. Yes, sir.
Q. By marriage?
A. No, sir; by blood.
(Witness excused.)

428 CHARLIE LEFLORE recalled by Government.

Mr. CLAYTON. Please state if you were here at the last term of court?
A. Yes, sir.
Q. Please state if you saw Mr. Halsell here?
A. Yes, sir; I saw him the last time we was here; the time this case was put off.
Q. He was subpœnaed.
Mr. BARNES. We admit he was subpœnaed.
(Witness excused.)

Cross-examination waived.

429 Mr. CLAYTON. If your honor please, I will introduce the application for witnesses in this case.
(Application introduced and read.)

(Here court adjourned until half-past one o'clock.)

430 In the circuit court of the United States for the western dist. of Ark. Application for witnesses.

UNITED STATES
vs.
A. S. LEWIS.

Now comes the defendant, A. S. Lewis, and states to the court that he can not safely go to trial upon indictment No. , charging him with the

crime of murder, without the testimony of the following witnesses, whose residences are endorsed hereon, and who are material to his defense: Andrew Henson, Ernest Smiley, I. M. Critchfield, W. E. Halsell, Mell B. Baird, Buck Lewis, Carl Lewis, Belle Jones, Jones (brother of Bell), Mrs. Lydia Cox, Jeff. Archer.

By Andrew Henson defendant can prove that said Henson saw him at his mother's house on the 15th of June, near Tulsa, which is some 50 or 60 miles from the alledged place of killing near Fort Gibson, and that he asked defendant to stay at his mother's and take dinner on said day.

By Emmet Smiley, who was clerking for Robert Bynum, mer-
431 chant at Tulsa, defendant can prove that he was in Tulsa on said day, and didn't leave there on train for Fort Gibson.

Also the same fact by Jeff Archer.

By Mell Baird defendant can prove that he was working on his place and not absent as claimed.

By I. M. Crutchfield and W. E. Halsell defendant can prove that they were in his company at Tulsa at noon on June 16th, 1888, the alleged date of said killing.

By Buck Lewis and Carl Lewis defendant can prove that a trade was made and a note given by Buck Lewis to the defendant, and date affixed as the 16th day of June by an almanac produced by one Hasty, who, defendant is now advised, claims there was a mistake in the date and is to be used against this defendant.

By Bill Jones, and Turner, his brother, defendant can prove that said Hasty worked for Bill Jones after leaving Lewis's, and told Jones that he had been offered $250.00 to swear against Lewis, but if Lewis would give any more he would swear for him; that he was for the man who would pay him the most money.

By Mrs. Lydia Cox defendant will prove that she was travelling a road between Tulsa and Ardmore on the afternoon of day succeeding robbery and killing, and met five men comming from direction of the Broden Amre settlement; that they were armed, and one of them riding a spotted horse; horses seemed very tired, and that defendant Lewis was not of the party. That they crossed road just in front of her. In this connection defendant states that it is claimed, as he is informed, that he was of this party, and that said robbery and killing is claimed to have occurred on the night of June 16th.

432 Defendant states that he knows of no other witnesses by whom he can establish the above facts; that he is poor and wholly without means to procure said witnesses at his own expense; wherefore he prays process of subpœna at the expense of the United States in good faith and not for delay, but that justice may be done.

(Signed) ALEX. S. LEWIS.

Subscribed and sworn to before me by A. S. Lewis, this February 9th, 1891.

(Signed) STEPHEN WHEELER, *Clerk*,
By W. B. PAPE, *D. C.*

433 In the circuit court of the United States, western district of Arkansas. Application for witnesses.

UNITED STATES
vs.
ALEXANDER LEWIS.

Now comes the defendant, Alexander Lewis, and states to the court that he can not safely go to trial upon indictment No. ——, charging him with murder, without the following additional witnesses, viz: Alsey Hendrix, W. L. Morris, W. J. Mounts.

By Alsey Hendrix defendant can prove that on the day that Tom Claywell was arrested and taken to Tulsa she saw defendant on road two miles from Tulsa after time for train to leave Tulsa.

By W. L. Morris defendant can prove that on the 16th day of June he applied to defendant at Tulsa, who had charge of a considerable job of fencing and land breaking for Mell Baird, for work under said Lewis, and by this knows defendant was in Tulsa on said day.

By W. J. Mounts defendant can prove that on the 15th, 16th, and 17th of June, 1888, he saw defendant at different times, and that he was not any considerable distance from home on any of said days.

Defendant states that the above facts are true and material to his
434 defense, and that he knows of no other witnesses by whom he can fully establish them.

Refers to and makes his original application a part hereof, and on account of not having sufficient means, and being actually unable to procure said witnesses at his own expense, asks said witnesses at the expense of the United States.

(Signed) ALEX. S. LEWIS.

Subscribed and sworn to before me by Alexander Lewis, this May 7th, 1891.

(Signed) STEPHEN WHEELER, *Clerk*,
By W. B. PABE, *D. C.*

435 *Afternoon session, October* 24, 1891, *half-past one o'clock p. m.*

L. P. ISBELL, called by Government.

Mr. CLAYTON. Your name is L. P. Isbell?

A. Yes, sir.

Q. Where do you live?

A. At Vinita.

Q. Please state what office you held in 1888.

A. I was riding a as deputy marshall.

Q. Do you know Tom Claywell?

A. Yes, sir.

Q. Who arrested him?

A. I did.

Q. Please state if these are your signatures upon this return [handing witness writ and subpœna in Claywell case, hereinbefore referred to.]

A. Yes, sir.

Q. Is that your signature to that account [handing witness account heretofore referred to]?
A. Yes, sir.
Q. When did you arrest Tom Claywell?
A. On June 17, 1888.
Q. Where?
A. 12 miles west of Tulsa.
Q. Do you remember serving a subpœna in this case upon Smiley?
A. Yes, sir.
Q. When?
A. On the 18th of June.
Q. Was Tom Claywell with you?
A. I don't think he was; I left him at the depot.
Q. When did you start after Tom Claywell?
A. I left Vinita, I think, either the 14th or 15th. I went to Chelsea for some parties, and went on to Tulsa, and I got there, I think, the 16th, and went to Bill Halsell's ranch.
Q. Did Halsell come with you when you came back?
A. Yes, sir; I think so.
Q. How far did he come?
436 A. He came to Tulsa. He didn't come to Tulsa right with me, but came right after I did, and went to Vinita the same day.
Q. When did you learn of the robbery at Verdigris?
A. The first I heard of it was on the train.
Q. What time did you get to Vinita?
A. We got there between three and four o'clock.
Q. You heard of it before you got to Vinita?
A. Yes, sir.
Q. How do you know that?
A. Halsell was talking about it on the train.
Q. Was this the day after you arrested Claywell?
A. Yes, sir.
Q. Did you see Crutchfield in Tulsa?
A. Yes, sir. He brought Halsell to Tulsa in a buggy the morning that we came home.
Q. What is your method of keeping the dates on which you arrest parties?
A. I have a book in which I keep the dates.
Q. Is there anything else that fixes the date on your mind?
A. When I got to Vinita I found a telegram from the United States Indian agent to me; ordered me to investigate about the robbery.
Q. Do you know anything about Halsell thinking this was a friend of his that was killed?
A. Yes, sir.
Mr. BARNES. I object to the conversation.
The COURT. He could not state the conversation, but he could use it as a reference.
The WITNESS. He spoke of it being a fr*a*ind of his on the Frisco railroad that was killed.
Q. You remember of hearing of the killing before you got to Vinita?
A. Yes, sir.

Cross-examination:

Mr. BARNES. Mr. Isbell, how would you make out your feed account for prisoners? Your actual expenses?

A. Yes, sir.

Q. Can you recollect these dates except from the returns?

A. No, sir; only from the returns; I remember the circumstance, but I get the dates from the returns.

437 Q. How long have you been a deputy marshal?

A. A good many years.

Q. Didn't you make out your returns and your accounts after you came in here?

A. Yes, sir.

Q. The chances are that you made this return from your recollection?

A. I always had a book, and when I made an arrest I would put it down the first opportunity I had.

Q. There are five names on this subpœna?

A. Yes, sir.

Q. Did they all live in Tulsa?

A. No, sir.

Q. Did you subpœna them all at the same time?

A. No, sir.

Q. Can you remember except from the return, the date you served it on Mr. Smiley?

A. No, sir.

Q. When you serve them on different dates, you don't divide them up, but put on it the date you served one of them?

A. No, sir; we generally divide them up.

Q. Do you think you could find a subpœna that way?

A. I think I could.

Q. Did you ever see a subpœna that had different dates on which the witnesses were served?

A. Yes, sir.

Q. Did you serve all these on the same day?

A. I don't know whether I did or not. I remember serving it on two witnesses in camp the day I got there with Claywell, and then I remember I served it on Jones and Smiley that day, and I think I met a colored man on the street.

Q. How long was you in town the day you left with Claywell for Vinita?

A. I think something like an hour.

Q. Do you remember Claywell being in Bynum's store while you was there?

A. I recollect of his going there; I went to the store with him before I ever served the subpœna on Smiley.

Q. Do you know of his going there because he had some business with Bynum?

A. Yes, sir.

438 Q. Do you know of his getting some money of Bynum?

A. No, sir.

Q. Do you know what his business was?

A. They was standing talking a few moments.

Q. Do you know what their business was?
A. No, sir.
Q. What day of the week was that?
A. I can't tell you to save my life.
Q. Do you remember of telegraphing Mr. Smiley not to come until you notified him, because you were going to hunt for the train robbers?
A. No, sir; I don't remember.
Q. Now, if this train robbery and murder actually occurred on the night of the 15th, you could have learned of it, and likely would have learned of it either in Tulsa or on the train on the day of the 16th?
A. I wasn't at Tulsa then.
Q. There was a telegraph line there?
A. Yes, sir.
Q. When did you leave Vinita for Tulsa?
A. I left there on the 16th.
Q. How often have you been to Tulsa?
A. I have been there a dozen times.
Q. How long have you lived at Vinita?
A. 16 years.
Q. You knew a good many people that lived around Tulsa?
A. I knew a good many more in the country than I did in town.
Q. Did you see this man Baird on the train the day you went to Vinita?
A. No, sir; he might have been on the train and me not see him?
Q. Where did you leave your prisoners?
A. I left them in camp and went to Muscogee to look after train robbers.
Mr. CLAYTON. When you was in Tulsa you was there at the depot most of the time except when you was in that store?
A. Yes, sir.
Witness excused.

End of the testimony.

439 This was all the testimony offered on either side in this case.

440 Whereupon, after argument by the counsel to the jury, the court charged the jury orally as to the law of the case, which charge was taken at the time of delivery by the court stenographer as follows, to wit:

441 In the circuit court of the United States, within and for the western district of Arkansas, August term, 1891.

UNITED STATES
vs.
ALEXANDER LEWIS. } Murder.

Charge of court to jury, delivered Oct. 26th, 1891.

PARKER, J. The defendant, Alexander Lewis, is before you charged with the crime of murder, for having, on the 15th day of June, A. D. 1888, at the Cherokee Nation, in the Indian country, taken the life of Benjamin C. Tarver, who is alleged to be a white man and not an Indian, by shooting him with a gun, and that the act was so done, that it was done wilfully and with malice aforethought. That is a brief statement of this charge as contained in the indictment against the defendant.

You have had fully presented to you one branch, or element, that enters into your verdict, called the facts of the case. The testimony of witnesses has been offered before you, and you have been asked to believe it. It is for you to get the truth of the case from these facts, from this testimony, believing that which you think is entitled to belief, in order that you may get at the truth as best you can by the exercise of that
442 cool, deliberate, and impartial judgment that the law contemplates you will exercise in cases of this kind. Beside the facts, or the truth of the case, you are to have certain rules that are to govern you, and are to control your finding in the case. These rules are embraced in what is called the law of the case that the court gives to you, leaving to you the application of it. You take the principles of the law as given by the court without question; that is to say, you have no right to determine in your minds that that is the law, or this is the law, against the principles announced by the court. But to you remains the duty of applying whatever principle in your judgment is applicable to the truth of the case as you may find it from the testimony.

In regard to this charge which is made, there are certain elements which go to make it up—certain things, in other words, must be found by the testimony to exist before you are authorized under your oaths to say that there is any charge of murder established here. In the first place it must be proven that Benjamin C. Tarver is dead; and, in that connection, in order to give this court jurisdiction to try this case, it must be proven that Benjamin C. Tarver was a white man, a citizen of the United States; that is a jurisdictional fact. There is no controversy about that, however. The proof shows beyond question that he was a citizen of the United States, living in Texas. The second thing that is necessary to be found is that he died by reason of the use of the violence named in the indictment—in short, that he died because he was shot to death—with either a gun or a pistol. It is alleged in the indictment to have been a gun. If the proof shows it to have been a pistol the allegation is satisfied just
443 the same as though it was shown to be a gun, because they are kindred weapons, producing like results, and having the same propelling power. One is a gun, the other is a gun, and they are both pistols. Then, under that requirement, you are to find that he died because of wounds inflicted upon him by means of a gun or pistol. You take the surrounding circumstances on that point, and if they are sufficient to satisfy a reasonable mind so that you could depend upon it, the fact would be established. For instance, the time that he lived after the infliction of the wound. If he died instantly you would have the right as reasonable men to attribute that death to the wound as a cause thereof. The third proposition necessary to be established is that the violence was the act of the defendant. I am giving you now this general proposition. Of course there is a subordinate proposition arising under that, which explains fully how the act may be attributed to him, or when it may be attributed to him as his act, which the court will explain to you in the course of the charge. The fourth proposition necessary to be established is that the act which produced the death of Benjamin C. Tarver was done wilfully and with malice aforethought. When this fourth proposition exists there exists murder. But it becomes necessary, I say, to give you the subordinate propositions arising under these main ones. Take the one where it is necessary

to find that the act was the act of the defendant. The court will explain to you in the course of the charge how a man may be a participant in an act which is a crime and not with his own hand commit the act that is a crime.

In this connection, the Government claims that the killing of
444 Benjamin C. Tarver was done while the parties who killed him were in the act of robbing an express messenger on the Missouri, Kansas & Texas Railway, and that such killing was done in the course of the perpetration of such robbery. The claim upon the part of the defendant is that he was not a participant in that act, consequently would not be responsible for whatever consequences grew out of that act. These are the two contending propositions that are offered for your solution on the respective sides of this case. In order that a killing may be designated as a murder it is necessary that the act shall be done wilfully, and with malice aforethought. It is necessary that you should have some further explanation, because the word "wilfully" as used in this connection, has a peculiar legal meaning attached to it, and the phrase "malice aforethought" has a legal meaning attached to it, and it is by these legal meanings that you are governed in the solution of this problem. I can scarcely do better than read to you on this proposition a charge that was given in another case defining the meaning of wilfully and malice aforethought, a case tried heretofore in this court:

"A man may be killed, and may be killed by having received a gunshot wound, but unless he is wilfully killed, and killed with malice aforethought, his killing is not a case of murder. Therefore these things are to be looked into. It is necessary that they should be established. You are to see whether from the facts and circumstances of the case the kind of a proposition is presented in which is involved this element of the crime of murder. Now, you cannot tell whether these elements exist or not until you know what they are, for the reason that they have what is called a "technical" or "legal" meaning attached to them. The word
445 "wilful" and the phrase "malice aforethought" have a meaning that the law gives to them, and it is that meaning by which you are to be controlled; it is that meaning of these words that you are to be governed by in your deliberations. It is peculiar to a charge of crime of this kind. It is sometimes called a "legal meaning" that is attached to these words. Therefore, it is necessary that you should have the definition of these words, or of the word "wilful" and the phrase "malice aforethought"—the definition that the law attaches to them—because you are sworn to try this case by the law and the evidence.

"The word "willful" as used in connection with the charge of murder, such as that which is preferred in this indictment against this defendant, means an intentional killing and not an accidental killing. It means an act which results in death that is intentionally done, and one that is not accidentally done. Now, there is a great difference in the law between that which is accidental and that which is intentional. The law fastens intent to every act that is not an accident. Every act that produces death that is outside of the definition of the word "accident" is intentional in the law, whether it grows out of a specific design to take life or whether it grows out of gross carelessness, or whether it arises from a condition of mind that prompts the possessor of that mind to be engaged in some other wrongful or criminal act, and in the execution of it a life is taken,

provided it is a wrongful or criminal act, which from its nature and the way it is executed as a natural and probable and reasonable result death may ensue from the execution of the unlawful or criminal act. That which is an accident in the law is something which occurs after the
446 exercise of the care that the law requires to be exercised to prevent its occur'ence. When a man exercises the amount of legal care exacted by the law, and something occurs beyond that, that is not his wilful act. The law recognizes that he does not do it wilfully. But when he does an act which naturally or reasonably or probably, from its nature and the way it is done, produces a certain result, that is held to be an intentional result, because the act as done in that way is intentional; and whenever the act is done, and it is an act that may naturally or probably produce a certain result, whenever the act is done intentionally the result is intentional. For example, if a man presents a gun at another and fires it at him, the fact of drawing the gun and presenting it shows that he wills what he does, shows that that act is a willfull act upon his part. And when that state of facts exists, the act of presenting and firing the gun is recognized by common observation and common experience as a willful act. If that act produces death, because there is a known connection between the act and the result which is probable, which is usual, and which is reasonable, the party is said to have intended the result, and consequently to have willed the result. Now, intent is something that can be found only by inference. It can only be found by the circumstances in the case, by the nature of the act done, and the way it was done, and the character of the weapon used, bearing in mind that the law holds every man to know the nature of the weapon that he uses, the purposes for which it is constructed, and the results that naturally and reasonably are produced by it. That is recognized by the law as a matter of com-
447 mon knowledge within the mind of every man who has arrived at the years of discretion. For that reason when a man presents a gun or a pistol at another, and shoots it at him, the law says he intends to kill him, because the killing is a result that is natural or probable or reasonable."

So, in a case of that kind, when you are called upon to find whether h intends to kill or not, you find, first, whether he presented the deadly weapon in shooting distance of him, and fired it at him, whether that was a willful act, and when you find that (as I have told you) from the character of the weapon used and the manner of its use, because the weapon cannot use itself; it cannot present itself; it cannot pull its own trigger; it cannot of its own accord, or of its own will-power, because it has none, send the deadly missile in the body of the man who is killed; there is an intelligent will-power that does all that; I say, when you find a gun or pistol has been held in that attitude, and that it has produced a deadly result, as reasonable men, as men of common knowledge, of common observation, you must come to the conclusion that the party willfully did that act, and when he willfully does an act of that kind he willfully produces the result. A word in this connection as to how you may find how the act was wilfully done:

"The presumption that the law recognizes is that a man is held to have intended the natural and ordinary consequences of his act. Every sane man, who is a voluntary agent, acting upon motive, must be presumed to

contemplate and intend the necessary, natural, and probable consequences of his own acts. If one voluntarily or wilfully does an act which has a direct tendency to destroy another's life the natural and necessary
448 conclusion from the act is that he intended so to destroy such person's life. So, if the direct tendency of the willful act is to do another some bodily harm, and death in fact follows as a probable consequence of the act, it is presumed that he intended such consequences, and he must stand legally responsible for it. So, where a dangerous and deadly weapon is used with violence upon the person of another, as this has a tendency to destroy life, or to do some great bodily harm to the person assailed, the intention to take life or do him some great bodily harm is a necessary conclusion from the act."

You take the act done. Now, your common observation teaches you that a gun or a pistol fired at another within shooting distance of him will put his life in danger; it may probably destroy it. For that reason, because we recognize that, the law says to us when an act of that kind transpires that any citizen, upon the right of self-defense, may do whatever may become necessary, even to the extent of taking life, to prevent danger to life. Such an act is recognized by the common understanding of men as being one to life so dangerous, so immediately impending over the party, and about to fall upon him, that the right to invoke whatever means are necessary to turn aside that danger then and there springs into existence, and is in the hands of the citizen to be used by him in the face of such a set of facts. This may be done because of the nature of the act, because of its character, because of the results that are usually produced by it. This is a good test of when an act is willful. If the party draws and presents and fires a gun, the act of drawing and presenting and firing it being prompted by the will of the party, that act is willful; and
449 if death ensues the death is willful, and that is the way you may find it. That is the first element of the crime of murder. It is not the trait that distinguishes murder from any other homicide, because that may exist when you kill a man in self-defense—you do it willfully; and it may exist in voluntary manslaughter. But there is something else which distinguishes murder from any other homicide, any other grade of killing, any other grade of man-slaying, and that is the phrase "malice aforethought." When that exists it is murder.

Now, I apprehend that we have a good understanding of what is meant by this first element, what is meant when it is said the act was willfully done. We come next to the phrase "malice aforethought" to see what it means and to see how we may find its existence. Because it is something that originates from the mind of the party doing the act, we must find some way or another of getting at the condition of the mind that is doing that act. If we can not fathom it, if we can not penetrate its inmost recesses to see what is going on there, we must adopt some other means that are reasonable, some other process that is rational, to get at the mental condition of the party, because both of these characteristics of murder spring from the condition of the mind of the party. The law says we may do it by circumstances. We may do it by reason of the character of the act done, the manner in which it was done, and we may solve the condition of the mind by the light of the facts and circumstances that surround the act

going to characterize it, to show what manner of act it is, bringing
450 to bear upon a condition of facts of that kind the observation of men of mature judgment, of men of intelligence, of men who, because of the amount of information they possess, are to the greatest extent qualified to discharge the great and responsible duties devolving upon them as jurors. As I have remarked to you before, when malice aforethought exists, murder exists. Now, let us see what is meant by that; let us get an understanding of it if we can; let us comprehend it fully, that you may make a proper application of it to the facts in this case. If the facts show that it exists in this case, or that Benjamin C. Tarver's life was taken willfully, and this other element surrounded the transaction known as malice aforethought, the killing of Benjamin C. Tarver would necessarily be murder, and nothing else. Now, what is this element of this crime? It is defined by the law in a general way to be the doing of a wrongful act without just cause or excuse in such a way and under such circumstances as to show that it was done wrongfully, and that it was done in the absence of that which would give the party the right to defend against it; or that it was done in the absence of mitigating circumstances. And it is defined again as the doing of a wrongful act without just cause or excuse, and in such a way as to show that he who did it had a heart void of social duty and a mind fatally bent upon mischief. Let us see how the law defines it, and then again how the law tells us it may be found to exist. It can only be found by circumstance, because malice aforethought, like willfully, is something which exists in the mind that is necessary to be found to make up the elements of the case, and as you can not get into the mind to know
what is going on there (and you could not tell what was transpiring
451 there if you could get into it), you must learn it in some other way; and there must be some rational way by which you may learn it, some way that rational men would adopt, because you are not authorized to adopt any other method than that which is reasonable in arriving at conclusions, and there is a reasonable way, which is the way that the law recognizes as a proper way by which men may arrive at conclusions. It is from the nature of the transaction, the nature of what takes place, the character of the thing done, and all the surrounding facts and circumstances that you are authorized to take into consideration to see what was the nature of the thing done, whether it was an innocent act or a criminal act, and, if a criminal act, what was the nature of that criminal act.

'Malice aforethought is the grand criterion which distinguishes murder from other homicide, and it is not so properly spite or malevolence to the deceased in particular as any evil design in general; the dictate of a wicked, depraved, and malignant heart; a purpose to do a wicked act; and it may be either expressed or implied in law. Express malice is when one with a sedate, deliberate mind, and formed design, doth kill another, which formed design is evidenced by external circumstances discovering that inward intention, as lying in wait, antecedent menaces or former grudges, and concerted schemes to do him some bodily harm. So in many cases, when no malice is expressed, the law will imply it, as when a man wilfully poisons another. In such a deliberate act the law presumes malice, though no particular enmity can be proved. And if a man kills another suddenly, without any or without a considerable provocation, the law implies

malice, for no person, except of abandoned heart, would be guilty
452 of such an act upon a slight, or upon no apparent, cause.'

'Malice is an intention to do bodily harm; a formed design to do mischief. It has also been defined as a deliberate intent to kill. It does not necessarily import especial malevolence toward the individual slain, but also includes the case of a generally depraved, wicked, and malicious spirit; a heart regardless of social duty, and deliberately bent on mischief. It imports premeditation. Therefore, there must logically be a period of prior consideration; but as to the duration of that period no limit can be arbitrarily assigned. The time will vary as the minds and temperaments of men, and as do the circumstances in which they are placed. The human mind acts at times with marvelous rapidity. Men have sometimes seen the events of a lifetime pass in a few minutes before their mental vision. Thought is sometimes referred to as the very symbol of swiftness. There is no time so short but that within it the human mind can form a deliberate purpose to do an act; and if the intent to do mischief to another is thus formed as a deliberate intent, though after no matter how short a period of reflection, it none the less is malice.'

'Malice is an intent of the mind and heart; the doing of a wrongful act without just cause or excuse, or in the absence of that which justifies the act, or which reduces the grade of the crime. Whenever a wrongful act is done without just cause or excuse, and in the absence of mitigating circumstances, which produces death, it is murder, whether it grows out of special spite or animosity, or a specific design to take life, or the purpose
to do some other act of a wicked and malignant and criminal
453 nature, which, because of its nature and the way it is done, a human life is taken, malice aforethought exists, because that is the doing of a wrongful act without just cause or excuse, which results in murder. It evinces a formed design to do such mischief as may deprive a fellow-being of life.'

'Malice is an intent of the mind and heart. There is never presented to a jury direct evidence of what was the intent of the man's heart at the time.'

'You cannot tell by direct proof, bearing in mind the distinction between these two kinds of evidence, positive or direct proof and circumstantial evidence. Positive or direct proof is the proof which shows the existence of the very thing itself that you are hunting for.'

If, for instance, it becomes necessary to show that A shot at B, and C comes in and says that he saw A shoot at B, that is positive evidence of it, positive proof of the shooting, of the fact necessary to be found, and because the evidence is so near to the thing itself it is called positive evidence of it; when it is further off from that thing, but is still evidence standing around the thing done, it becomes circumstantial, or, in other words, circumstantial evidence. Circumstantial evidence is proof that may be equally cogent and equally powerful proof of the existence of the thing, but it is not the thing itself, but is that which shows its existence in the shape of the surrounding facts and circumstances, in the shape of that which attends every transaction in life; which goes to characterize it one way or the other; which goes to show either that it was a criminal
act, a criminal transaction, or that it was a transaction that was
454 honest and up right, and void of crime.

'There is never presented to a jury direct evidence of what was the intent of the man's heart at the time. He is the only possible and direct witness to that, and if he meant so to testify he would plead guilty. The existence or nonexistence of malice is an inference to be drawn by the jury from all the facts in the case. The emotions of the heart, the processes of the mind, are to us, or to anyone outside of the individual, exhibited by the acts which the individual performs, and you are entitled to infer what his intent was, what were the processes of his mind and the feelings of his heart, by a careful study of the acts which he performs, and all the other external indications which he may have given of what his state of mind and heart was. As an eminent text writer has put it, there is no case of malicious homicide in which malice is not inferred from attendant circumstances; no case in which it is demonstrated as express.'

It can not be demonstrated as express.

"We have no power to ascertain the certain condition of a man's heart. The best we can do is to infer his intent more or less satisfactorily from his acts. Now, a person is presumed to intend what he does. A man who performs an act which he knows will produce a particular result is from our common experience presumed to have anticipated that result, and to have intended it. Therefore, we have a right to say, and the law says, that when a homicide is committed by weapons indicating design, then it is not necessary to prove that such design existed at any definite period before the fatal blow. From the very fact of a blow being struck we have a right to infer as a presumption of fact that the blow was
455 intended prior to the striking, although at a period of time inappreciably distant, and thus we frequently find the statement laid down in reported cases and by text writers that malice is to be inferred from the use of a deadly weapon."

That naked statement might be misleading.

"Malice is to be inferred from the attendant circumstances which surround the transaction, and the jury have a right, and it is their duty to look at these attendant circumstances to see what character of act it was, to see what was the condition of the mind of party or the parties who engaged in that act, as being the only way that they can arrive at the conclusion as to whether it was an act accompanied with malice aforethought, or the converse of that, in which there was an absence of that element of the crime of murder."

Now, anything that shows deliberation, anything that shows a premeditated purpose to do a wicked or willful act that might result in death, is evidence that may be considered by the jury as evidence of malice, and of the existence of malice aforethought. For instance, the laws lays it down as a principle, if premeditation is shown, if the purpose to kill directly existed in the mind of the party or parties who killed, or the purpose to do a willful act that might result in death is shown by the actions of the party to have had a previous existence, an existence prior to the time of the killing, that shows the existence of malice aforethought, provided there is an absence from the case of that state of facts which goes to show the party had a right to do what he did do. The law lays it down that the deliberate selection and use of a deadly weapon shows premeditation,
456 show that the act was thought of beforehand; and whenever a party enters upon whatever unlawful or criminal enterprise he may enter

upon prepares himself with a deadly weapon with the purpose of using it in a wicked or unlawful enterprise, if it be one of that character enabling him to consummate and carry out that enterprise, the selection of a weapon for that purpose is evidence of the existence of malice aforethought, is evidence of the existence of a purpose to do a wrongful act without just cause or excuse, in such a way as to show that the party who does it has a heart void of social duty, and a mind fatally bent on mischief.

That is the general definition of malice. It shows a purpose to do a wrongful act without just cause or excuse. That is the way you are to find it. You go to the killing. You ascertain how the killing was produced, the way it transpired, the way it was done; you see what character of weapon was used, you see whether that weapon was prepared beforehand, whether it was deliberately and willfully used at the time, and in a state of case where the evidence shows that the killing was willfully done, if there is an absence from the cause of that which shows that the party had a right to so willfully kill upon the law of self-defense, or that the killing was willful, but there were mitigating facts attending it, the proof which shows it was willfully done shows it was done with malice aforethought; and in a case of that kind the very same degree of proof that establishes a willful killing would establish a killing with malice aforethought. Now, these are the two elements which make up this crime—that the act was done willfully, and done with malice aforethought. You will remember in this connection that the Government claims (as I have already told you) that this killing
457 was done in the perpetration of a robbery. I will say to you, in this connection, if that is so, if the proof shows that Benjamin C. Tarver while a passenger on that railroad train was shot and killed while the parties were engaged in robbing that train, or in robbing the express messenger, or anybody upon the train, that that act shows premeditation, shows a deliberate purpose to do that act; it shows a premeditated design, it shows preparation to do an act of that kind beforehand. And it is a principle of the law that when a killing transpires in the execution of crimes of a certain character that that is all the proof that is necessary to show premeditation, to show deliberation, to show a killing, in short, with malice aforethought, because of the principle I have already announced to you that every man is presumed to have intended the necessary or probable or reasonable consequences of his own acts. If he enters upon the execution of an act which is criminal, and is an act of that character that from its nature and the way it is executed a human life is jeopardized or endangered, the mere fact that he entered upon the execution of a crime of that kind and in the execution of it took a human life, shows him to be guilty of the crime of murder. Now, it is charged here that that was the nature of the act that was being executed at the time that Benjamin C. Tarver was killed, and that he as an innocent man, as an innocent citizen, doing that which he had a right to do, travelling upon one of the great highways of the nation, was shot down while in that condition by parties engaged in the crime of robbery. Let us see what the law says with regard to the relation of parties to the crime of murder when that murder
458 is committed in the execution of a robbery, because it is claimed by the Government that that is the condition of this case, and it therefore becomes necessary that the court should give you the law bearing upon the state of case where a number of persons enter into an agreement, or

have an understanding, either tacitly or expressly entered into, to commit the crime of robbery, and in the course of its commission a man is killed who is an innocent party, and who is not engaged in the robbery or attempt to commit robbery. It is necessary that you should have the law upon this proposition.

Now, first, as to the proposition or state of case where there is an agreement or conspiracy entered into by a number of persons to commit a crime or do an unlawful act and in the course of the commission of it a person is killed, if the unlawful act or crime agreed to be done was dangerous to to life or likely to inflict great bodily harm upon the person or persons who were the objects of this crime, or it was homicidal in its character, that is, a crime which, from its nature and the way it was committed, jeopardizes the life of the party upon whom it was sought to be committed, from its nature and the way it was to be carried out or committed, or it was of a character that from the way it was committed it would likely inflict great violence upon the persons of those or of the one upon whom it was to be committed; I say, when a number of persons have entered into an agreement to commit a crime of that kind and they proceed to its accomplishment, and the crime is of that character that it will necessarily or probably require the use of force and violence which may result in the unlawful taking or endangering of life, because of the nature of the act and the way it is done, every party to such an agreement who par-
459 ticipates in the act that is sought to be done, which is the primary purpose of those who entered into it, such as robbery, every party, I say, who has entered into that agreement and who enters upon the commission of the crime in the execution or commission of which the life of some one is taken, is responsible, or will be guilty of the crime growing out of the killing, although it may be done by one of the accomplices.

Say, in this case, if the understanding upon the part of the parties who entered into this robbery upon the express messenger, or a robbery of the express car, if they who had entered into it were present at that place and were in any way aiding, assisting, counselling, or abetting in the robbery of that express messenger, or the express car, at that time, and some one of the parties who had so conspired was to go and fire a shot which took the life of Benjamin C. Tarver, that would be the shot of all who were there concerned in that robbery. Why is that so? The law used to be that if a number of persons agreed to do any unlawful act, and the life of an innocent person was taken by any one of those who had entered first into the agreement and upon the execution of that crime, although the act of killing might be collateral to the main purpose, that is, something that did not necessarily or naturally or probably spring out of the execution of that purpose, they would all be responsible. And there is a case given away back in the reign of Charles II (to illustrate this principle) of the killing of a chicken. Parties went out to rob a hen-roost; to steal a fowl; to steal chickens; a number of them; no purpose to kill; no design of that kind. One of them, for the purpose of getting the chicken with ease, fired upon it and killed the owner of it in his yard or place where
460 they were seeking to get it. The courts at that time held them all responsible for that killing. The courts in this age, with a spirit of greater humanity and greater justice, as I believe, draw this distinction: In a case of that kind all the parties would not be held responsible for

that killing, although the act was unlawful. But if the act agreed to be done or entered upon by a number of persons is an act which, from its nature and the way it is usually executed, would endanger human life by its execution, they are all responsible for the taking of that life, upon the principle that is self-evident in the law, and is founded in justice and reason, that every man who has arrived at the years of discretion must be held to have intended the necessary, natural, or probable consequences of his acts. If a number of men agree to do an act which, from its nature or the way it is to be done, is an act that will put human life in jeopardy, or the destruction of human life is a necessary and a natural and a probable consequence of the act agreed to be done by the party, and upon the principle of the law I have already announced to you it is but equal and exact justice that all who enter into and upon an enterprise of that kind should be responsible for the death of an innocent person that transpires because of the execution of the enterprise then entered upon, and because that enterprise is one that would naturally and reasonably produce that result. I have already told you that if a man is killed in the execution of a robbery by those who are executing that purpose, that that is murder. It may be well in this connection to give you the legal definition of the crime of robbery, because there are only certain crimes in the execution
461 of which if a man is killed it becomes murder, because of the character of the crime that the party is committing. Robbery is the taking of the property of another from his person or in his presence by putting him in fear by the exercise of violence. That is the crime of robbery.

Now, the law defines the character of crimes that, when committed by a number of persons, all of such persons will be guilty of whatever crime results from the commission of the first offense. It says robbery is one of them. Why? Robbery has the very element that enters into it to distinguish it to make it a crime, as that of violence upon the person; and that as a probable and natural and reasonable consequence of an attempt to commit it a human life will be destroyed. The very demand of the man who robs, "Your money or your life!" implies that human life is in jeopardy, so that when a number of persons agree to, and enter upon the commission of, the crime of robbery, and a person is killed who is an innocent person, in the execution of the purpose to rob, all of the parties who have so entered into the agreement and upon the execution of the purpose to rob, are equally responsible. The pistol or gun fired is the pistol or gun of each and every one of them. There are other crimes of a like character, and the law, I say, draws this distinction, and bases it upon a just ground. It says that any crime which, from its nature and the way it is usually committed, will necessarily or probably or reasonably endanger a human life, is a crime that, if a number of persons agree to commit, and enter upon the commission of it, will involve them all in the consequences that ensue. The commission of robbery is a crime that may cause the death of an innocent person.
462 As I have told you, robbery is one of them, and arson is another. If a number of persons agree to commit arson, and go out and burn a house, from the nature of that crime and the way it is usually committed it necessarily endangers human life. Accounts are brought to us all the time of the destruction of life by the firing of buildings, by the destruction of buildings, when the crime of arson is committed. Because

of the nature of that crime, and from the very result that may be produced by it, that death may be produced as a natural and reasonable and probable result, all those who agree to commit it or enter upon its commission, or are engaged in its commission, if some of them destroys life, as a natural and probable consequence of the act of arson, they are all responsible for whatever crime grows out of the destruction of the life. The same with burglary. A number of persons agree to commit the crime of burglary. That is a crime which, from its nature and the way it is committed, probably or reasonably or naturally jeopardizes life. So, when a number of persons agree to commit that crime and enter upon its commission, and an innocent person is killed by one of the parties, it is the act of all. The same with the crime of rape. From its character, and the way it is committed, a human life is put in jeopardy. And when a number of persons agree to commit that, and enter upon its commission, and a human life is destroyed, the destruction of that life and the consequences of it fall equally upon all. So you may take this character of crimes where the primary purpose, as in the case of robbery, is directly against the property of the man sought to be robbed, and in the crime of rape the act is directly against the person sought to be raped, and in the crime of burglary where robbery is the prompting motive, and in
463 the crime of arson where revenge is the motive which prompts the party to destroy the property of another, and because of their nature and the way they are committed—from such a set of facts it arises as a reasonable and probable and rational conclusion that death is likely to be produced by them. All are held responsible for the consequences if death be a consequence that grows out of the commission of an act of that kind.

Now, let us see what the decided cases say upon that. We first read what was decided in the case of U. S. v. Ross, 1 Gall., 624; 2 Crim. Law Mag., 487, note. "The case of the U. S. v. Ross is frequently cited as supporting this doctrine" that I have enunciated. "In that case, which was upon an indictment for being present, aiding, and abetting in the murder of a colored man on board the American schooner *Pocahontas*, it appeared that the prisoner, with others, came on board the vessel, armed with muskets and other weapons, drove the crew below, wounded two persons, knocked down the mate, and killed the colored man." Their purpose was to capture the vessel, I suppose, as was frequently done at that time, and run it off into the *salve* trade or into piracy. It was a very common thing, even around our own coasts, not many years ago either, for men to watch their opportunity and capture vessels and run them off and use them as piratical crafts. There was no evidence as to who inflicted the mortal wound, but it was proved that the seizing of the vessel was by a preconcert, and with the determination to accomplish the result, whatever the consequences, and that the defendant was present when the killing took place, armed in the same manner as the others, and acting as
464 their chief. The purpose was not to kill. That was not the primary purpose, but to seize the vessel; but the seizing of the vessel by violence and force was the doing of an act which would naturally, or reasonably, or probably produce death. For that reason all those who entered into that preconcerted action, who had entered upon

that wicked and unlawful enterprise of taking possession of that vessel, were held responsible for the death of the colored man. And here is what Judge Story said about it in his charge to the jury:

"In the present case the prisoner and his associates, if the evidence be believed, had entered into a most atrocious conspiracy, in which they were but too successful. The murder (for there can be no doubt it was such in some of the party) was committed in the course of the execution of that conspiracy. It was a natural, though not a necessary, consequence of the attempt to execute it. The conspirators appeared to have armed themselves for the purpose of insuring success at all hazards." It is true that Judge Story in another part of his charge states the rule as to the responsibility of one for the acts of others, done in the prosecution of a common unlawful design, in almost the same words as are used in State v. Shelledy, (8 Iowa, 477) but he adds: "More especially will the death be murder if it happens in the execution of an unlawful design, which, if not a felony, is of so desperate a character that it must ordinarily be attended with great hazard to life, and, *a fortiori*, if death be one of the events within the obvious expectation of the conspirators."

Now, reading from the same author, 486, note, in the case of Ruloff v. People, 3 N. Y., 213, a case tried before the courts in New
465 York, and finally appealed to the supreme court of New York; and the supreme court, in passing upon the question, said:

"If the homicide was committed by one of several persons in the prosecution of an unlawful purpose or common design, in which the combining parties had united, and for the effecting whereof they had assembled, all were liable to answer criminally for the act; and, if the homicide was murder, all were guilty of murder, assuming that it was within the common purpose." "The evidence showed that the blow which caused the death was inflicted by one of three burglars while in the act of robbing the store; it was uncertain whether the accused actually inflicted the blow, and thus the question was raised as to his responsibility for such an act committed by one of his confederates. There was evidence from which to infer a purpose on the part of the burglars of resisting to the death any one who should oppose them, and the charge of the judge that such an illegal purpose must have been formed before the actual commission of the offense, although not necessarily at the time when the parties went out with the common purpose of larceny, is held by the court to be a correct statement of the law."

Here is a case that was passed upon years ago by the supreme court of Illinois, in which a number of parties had burglarized a house in Chicago, stolen a lot of goods, and some of the parties—whether they had been in the burglary or not they were not able to say—but some of these parties took these goods and were starting towards a fence-house with them—they call it in the city a "fence-house," a place where they receive stolen goods—
and while standing in front of that house unloading the goods they
466 were interrupted by a policeman that some one of them shot. The court in that case said it was not the act of all, because the fact of unloading these goods there at that place was not an act which naturally or reasonably or probably in its execution would jeopardize human life; but if it had been an act that did put human life in danger, then the prin-

ciples of law that I have given you would have been applicable, and here is what the court declares the law to be:

"The principle which underlies and controls cases of this character is the elementary and very familiar doctrine, applicable alike to crimes and mere civil injuries, that every person must be presumed to intend and is accordingly held responsible for the probable consequences of his own acts or conduct. When, therefore, one enters into an agreement with others to do an unlawful act, he impliedly assents to the use of such means by his conspirators as are necessary, ordinary, or usual in the accomplishment of an act of that character. But beyond this his implied liability can not be extended. So, if the unlawful act agreed to be done is dangerous or homicidal in its character, or if its accomplishment will necessarily or probably require the use of force or violence, which may result in the taking of life unlawfully, every party to such an agreement will be held criminally liable for whatever any of his co-conspirators may do in furtherance of the common design, whether he is present or not."

Now, you pass upon the question as to whether or not the purpose to rob is a crime that is committed by force and violence, and when attempted the exercise of force and violence is necessary to consummate it.
467 That is one of the very ingredients of that crime. Then, is it an act of that character, which may result in the taking of life unlawfully, or which would be dangerous to life? If so, it would be homicidal in its character. Or would the accomplishment of that crime necessarily require the use of force, and that force so used as to jeopardize human life? If so it is the doing of an act that puts human life in danger, and which puts it in danger as a natural or probable or reasonable consequence of the act agreed to be done. And I repeat again that if the evidence shows in this case that there was a purpose entered into by these parties spoken of by the witnesses together with the defendant to enter upon the crime of robbery of the express car or messenger, or the passengers upon that railroad train, if they agreed to enter upon a crime of that kind, and went to the place where the attempt was made to commit it, and were in the act of committing it, and in the course of the commission of that act some one of the party fired the shot which took the life of Benjamin C. Tarver, that shot was the shot of all; and in such a state of case as that, if the evidence shows that state of facts, you have that which shows premeditation; you have that which shows deliberation; you have that which shows a purpose that was conceived and matured beforehand, to do an act which was naturally and probably dangerous and deadly in its character, to take the property belonging to another or others, from the person or presence, or from the custodian of that property, by the exercise of violence so as to put the owner or custodian of that property in fear. That is known to the law as the crime of robbery. Of course no such criminal liability attaches because of the mere agreement to commit the crime. It
468 is necessary that all should have participated, or to have been participating in the crime at the time of its commission in order that all are responsible.

It becomes necessary in this connection to give you the law defining the status of a party who may ally himself to a wrongful or criminal transaction by reason of an agreement called in the law a "conspiracy;" an agreement to do an unlawful act; an agreement in this case to commit the crime

of robbery. That of course underlies the commission of an act of that kind by a number of persons. There always is underlying an act, or preceding an act, an agreement to commit that act. That is either entered into expressly; that is, by means of so many words used upon a full understanding of the parties, or upon the existence of that full understanding it is entered into tacitly; that is to say, a party with the knowledge of what is to transpire, with a knowledge of what is to be executed, joined the parties who have conceived the design, and enters upon the execution of that design by rendering aid or assistance to them; that I say, means the existence of a conspiracy; something that is entered into at the time; something that is formed in secret; something that is confined to the breast or minds of those who enter into it, and consequently it is something that can only be established by circumstances going to show its existence. To connect a party with a criminal act means, first, that he has agreed to do the act, either by so many words, or tacitly; and then that he has entered upon the execution of the crime, and has continued in the execution of it, in a case of this kind in order to fasten the liability upon him, continued up to the time when the killing transpired. When he is in that attitude he is
469 in an attitude of being responsible for whatever crime grows out of the killing, and (as I have told you) if a killing is executed during the perpetration of a robbery, it can be nothing else but murder. It shows premeditation. The act is premeditated which results in the death—the act of robbery—and it is an act which naturally or reasonably or probably may produce that result. In this connection it is necessary that I should give you briefly the principle of law showing how more than one person may commit a crime. The defendant to be connected with the crime charged in this indictment, must have been allied to that crime of robbery; he must have been connected with it. The law says that when they have agreed to enter upon the commission of a crime, which necessarily or probably endangers human life in its commission, whenever they agree to enter upon it, and do enter upon the commission of a crime of that kind, and are present at the place in the execution of the purpose of robbery, they are all present aiding and abetting in the act of killing. The law says that those who participate, those who with their own hands, or with his own hands does an act which is a crime, that he is responsible for this act. It says further all those who are present at the place, and are participating in that which produces the result, whether the primary purpose was to bring about that result, or the primary object was to do something else which would naturally produce such a result, are responsible. All persons who are present at the time of the commission of a crime are principals, although only one committed the act, provided all are proven to have confederated and engaged in a common design of which the
470 perpetration of the crime is a part.

"All persons who are present at the time of the commission of a crime are principals, although only one committed the act, provided all are proven to have confederated and engaged in a common design of which the perpetration of the crime is a part. This doctrine of criminal combination is firmly established in our criminal jurisprudence, and the cases furnish numerous illustrations. All are held responsible, because the will of each individual contributed to it; each intended that the crime should be perpetrated. Thus in Green v. State (13 mo., 383) two confederated

to commit a murder. Only one did the killing. The other being present he was held equally guilty. What, in the sense of the law, is meant by being present, aiding and abetting, is thus stated in Foster's Crown Law. That when the law requires the presence of the accomplice at the perpetration of the fact in order to render him a principal it does not require a strict, actual, immediate presence, such a presence as would make him an eye or ear witness of what passeth. Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned to him; some to commit the fact, others to watch at proper distances and stations to prevent a surprise or to favor, if need be, the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law, present at it; for it was made a common cause with them, each man operating in his station at one and the same instant, towards the same common end, and the part each man took tended to give countenance, encouragement, and pro-
471 tection to the whole gang, and to secure the success of their common enterprise."

So that all those who are present at the place where the killing transpired, either in the execution of a direct purpose to kill or in the execution of a purpose to rob, out of the attempt to execute which purpose grows a killing, are all present, provided they are there in pursuance of a previous understanding to engage either directly or immediately in the killing or in the act of robbing. Now, that of course implies a previous agreement entered into beforehand. That, as I have told you, is called a "conspiracy," an agreement either expressly or tacitly entered into to commit an unlawful act, in this case to commit the crime of robbery. That, of course, can only be proven as a rule by circumstances, because when it exists it is something that is confined to those who enter into it. They do not proclaim their purpose upon the house tops, they do not call in a number of jurymen to witness the act that they may pass upon it; they do not make it known to anybody outside of the confederates, and the only way you can ascertain the existence of a wicked undertaking or agreement such as is named a "conspiracy" by the law, is to drag it to the light of day by circumstances. The association of the parties together, the fact of their participation in a common design, the fact of their being associated together at that place, and being there all at that time, are facts and circumstances that may be taken into consideration to show this undertaking that was entered into by them. It is not necessary to show it was entered into by so many formal words. It may be tacitly
472 entered into. If a man, with the understanding that another purposes to rob a third, joins him, goes to the place where the attempted robbery is made, and is there for the purpose of aiding him, he agrees to it just as much as though he had entered into an obligation in writing to assist him. It is an agreement in the law. That is the way you are to find it, by the relation that apparently the parties bear to each other, by their being there at the place, if the proof shows them at such place; by their attempt to participate in such an enterprise. All these things are to be taken into consideration by you for that purpose.

Now, I have told you that if this killing of Benjamin S. Tarver took place in the course of the robbery of the express messenger it was murder

and that all who participated in that robbery either by taking some part in it with their own hands, or with his own hand, or by being present at that place in pursuance of previous agreement to assist in it if it should become necessary, are not only participants in the robbery, but in the killing also, and a killing when done under circumstances of that kind is nothing else but murder. So, if you find that a robbery was being executed, and that during the execution of that robbery Tarver was killed, under the law I have given you defining an act of that kind committed in that way, you must necessarily conclude that a murder has been committed in the taking of the life of that man; you can come to no other conclusion.

Now, then, the other question is, whether or not this defendant was a participant in that crime. I have said to you in part how he may participate. There are other propositions that would ally him to the crime of robbery as well as those I have named. If he was so near as to be able to
473 in some way advise or assist, and not so assisting or advising, in the execution of it, he is in such a position that he is a participant in the eye of the law. If he was near enough to advise or assist for the purpose of advising or assisting in the execution of it he is then a participant in it as much as though he actually assisted with his own hand, or was there for the purpose of doing it with his own hand should it become necessary. But the defendant says that he was not present at the time of the commission of that crime. If he was not, because of the attitude of this case, he is not responsible for the murder of Benjamin C. Tarver. The defense in this case is that that the defendant, Alexander Lewis, was not a party to the crime of the killing of Benjamin C. Tarver, and he offers evidence to show that he was not present, and did not participate in the killing of Tarver, because it was impossible for the reason that at the time of the killing he was elsewhere. This in the law is called the defense of alibi, or an "alibi." That is, that the accused at the time of the killing was elsewhere, and could not then and there have taken part in taking the life of Benjamin C. Tarver, because of his being elsewhere, and therefore a physical impossibility on his part.

One of the material averments in an indictment, and one which must be proved by the Government beyond a reasonable doubt, is that the accused then and there—that is, at the time and place of the killing—took the life of Benjamin C. Tarver. This defense of an alibi is wholly inconsistent with the allegation in the indictment that the defendant then and there killed Benjamin C. Tarver, and, the law says, this defense is of all others the most decisive when duly substantiated or established; yet it is an easy defense to fabricate, and the most difficult to be disproved. An alibi that is not circumstanced as proof amounts to
474 but little. Its value depends upon the way it is circumstanced; that is, the witness, or witnesses, must be able to give you a detailed statement of such circumstances as to lead you to believe it is true, and that the defendant could not have been at the place of the killing at the time of the killing, and participated in it. A witness may be able to give you a set of circumstances which may have occurred, which may be true in every respect, and the falsehood may be only in applying them either purposely, or by mistake, to a different time or date or hour than that in which they occurred, and if this is done by mistake it constitutes a failure

of the facts as proving facts, and if it is done wilfully it is a contrivance by which pleas of alibi are made very difficult to disprove and so easy to fabricate. Because this is true, and because of the liability of witnesses to honest mistakes as to times or dates when things occur, and because it is so easy to fabricate a defense of this kind, a defense of that nature is often resorted to and is often attempted to be sustained and made effective by fraud, subornation, and perjury. Because a defense of this nature can with comparative ease be made effective by means of fraud, perjury, and falsehood, and the ease with which defenses of this kind can be fabricated, the proof offered to sustain an alibi must be submitted by you to a rigid scrutiny. In considering the strength of evidence necessary to sustain the defense of alibi it is obvious that all the testimony tending to show that the accused was in another place at the time of the killing of Benjamin C. Tarver is in direct conflict with that which tends to prove that he was at the place where the crime was committed at the time it was
475 committed and actually assisted in its commission.

In this conflict of evidence whatever tends to support the one tends in the same degree to rebut and overthrow the other, and it is for you to decide where the truth lies. This is the claim set up by the defendant. It is his defense in this case. It is offered to show that there was no connection upon his part with this crime. You are to take into consideration upon this proposition, as upon all others, all facts that are relevant thereto that go to establish this defense, or that establish the converse of it, that he was present and participated in the crime. All these facts and circumstances are to be taken into consideration by you. Now, there is offered in this case what is known to the law as positive proof of the connection of the defendant with this act, of his participation in this crime of robbery in the course of the perpetration of which a man was killed; I say, there is offered by the Government what is called "positive evidence" of that fact, the evidence of an eyewitness to the occur'ence which lead up to the death of Benjamin C. Tarver. That evidence goes to you, however, from the mouth of what is called in the law an "accomplice," a party who was a participant in the crime, and who, by his own statement, was so connected with the criminal act which resulted in the death of Benjamin C. Tarver as to make him a part of it, and as to make him responsible for that act under the law. The law says this evidence is competent. It goes to the jury, and is to be passed upon by them in their effort to get at the truth of the case. As to how they are to view that evidence, what credit they are to attach to it, the law points out to them, and while it leaves the evidence in their hands, and the weight of it to be
476 passed upon by them, it tells them it is competent; that is, it goes to them, and the credibility of it is to be left to the jury. Touching the testimony of accomplices Mr. Greenleaf, in his work on evidence, says:

"The degree of credit which ought to be given to the testimony of an accomplice is a matter exclusively within the province of the jury. It has sometimes been said that they ought not to believe him unless his testimony is corroborated by other evidence; and, without doubt, great caution in weighing such testimony is dictated by prudence and good reason. But there is no such rule of law, it being expressly conceeded that the jury may, if they please, act upon the evidence of the accomplice without any

confirmation of his statement. But, on the other hand, judges, in their discretion, will advise a jury not to convict of felony upon the testimony of an accomplice alone, and without corroboration, and it is now so generally the practice to give them such advice that its ommission would be regarded as an ommission of duty on the part of the judge." In a case that I qill quote from the court says "that witnesses have been called in the course of the trial to testify, some of whom are under indictment in this court, and have plead guilty to the charges presented against them. There has been much criticism of their testimony and considerable discussion of it. The court instructs you upon this subject that it is a settled rule in this country that even accomplices are competent, and that the Government has a right to use them as witnesses, and it is the duty of the court to admit their testimony and that of the jury to consider it. The testimony of accomplices is, however, to be received with caution. The jury should not rely upon it unsupported unless it produces in their minds the
477 most positive conviction of its truth. It is just and proper in such cases for the jury to seek for corroborating facts and circumstances in material respects, but this is not absolutely essential, provided the testimony of such witness produces in the mind of the jury full and complete conviction of its truth. You may believe it upon its own inherent strength, but it is always better to look for corroborating facts. As a rule juries should look for these corroborating facts."

Now, then, the law substantially upon that proposition is that you should look through the case, when the testimony of this accomplice is offered you by the Government, to see whether there are facts corroborating his evidence. And again it becomes necessary that you should see to what extent, or in what part of his statement, or in what part of the transaction there are corroborating facts, because he must be corroborated as to facts that are material to the case, and by facts which show the connection outside of his evidence, of the defendant with the transaction, that identify him as a participant in that transaction that resulted in the death of Benjamin C. Tarver. Therefore the corroboration should consist in some circumstance or circumstances that affect the identity of the accused, that show that he was a participant in the crime. The accomplice should be corroborated as to the particular person who is charged with the offense. There must be some other facts and some other circumstances which bring the crime home to the defendant, which go to corroborate the statement of the accomplice. That is what is meant by corroborating his statement by some material evidence, or evidence showing a material fact in the case. That is to say, the accomplice must be corroborated as to the person of the defendant; the corroborating facts should go so far as to iden-
478 tify the person of the prisoner against whom the accomplice speaks. The rule requiring corroboration does not require that every fact sworn to by the accomplice shall be corborated, but such of them or so many of them must be corroborated by facts and circumstances as to, in your judgment, give that strength that belongs to the truth alone to the testimony of the accomplice. If there is not evidence independent of the testimony of the accomplice tending to connect the defendant with the commission of the crime then there is no corroboration of it. The sufficiency of the evidence is to be passed upon by you as jurymen; you are

to weigh its sufficiency. You are to see whether or not it is corroborated in material particulars touching the identity of the defendant with the commission of this act; and, if so, then it goes to strengthen the testimony of the accomplice; it puts it in the attitude where it is stronger before you than it would be coming from one who had participated in the crime, and who had tainted his conscience with an act of that nature.

There are arrayed before you two sets of facts. One set is offered by the Government as facts which under the rules of law show how a party may be implicated and as tending to implicate this defendant in this crime. The other set of facts are offered by the defendant to show that he was not implicated in the crime. You are the judges of the credibility of these facts. It is for you to consider the liability of each and every witness to honest mistakes, and to consider, if it becomes necessary for you to do so in your research for the truth, the interest that parties may have in fabricating a story, any sort of a falsehood, for the purpose of deceiving.

All of these matters are exclusively in your hands, you being the
479 parties who must search out by the light of the evidence in this case the truth of it, and you must base your finding upon the truth of the case as you may find it. You are necessarily, therefore, called upon to be the judges of the credibility of every witness and of every fact offered in the case. Many of these facts in all of these trials coming before you are circumstantial facts, these things that are around the occurrence, things that show whether or not the defendant was connected with the act. These are all to be taken into consideration by you, all that have been admitted before you as competent evidence. As to how much proof they amount to, what propositions they establish, with what degree of certainty they establish them, of course are questions that you are to solve, but you are to do it in an intelligent, in a dispassionate, and deliberate way, applying those rules of the law that are prescribed for the purpose of your government and for the purpose of directing your minds in the right channel when you are seeking to get at the truth of the case. You are, therefore, to pass upon the amount of credit you will attach to every fact in the case. You must do that before you can say that the facts are sufficient to prove a proposition as required to be established.

You are therefore required to look at the testimony of each and every witness, in its own light, and in the light of the other facts. You consider the relation that the witness bears to the case, the interest that they have in the result of the case. If they are to be affected seriously by the result of the case by the verdict, as is the defendant Alexander Lewis in this case, then in passing upon his evidence you are to consider that relation that he bears to the case. The highest interest and greatest interest a man
480 has in this life is the interest he has in his own life. He will make a greater sacrifice to preserve that than he will any other right that belongs to him. That is human nature, applicable to all of us. When you are passing upon the testimony of a witness so situated as that his life is being weighed in the balance, if you would do justice, you must pass upon his statement in the light of the attitude he bears; in the light of the interest he has to make statements of a certain character in the case; in the light of the motive that may prompt him or influence him to make statements that would control you or influence your minds in his favor. Now,

you weigh his evidence in that way, and you weigh it again in the light of the other evidence in the case. If the other evidence contradicts him it weakens his evidence to the extent that you attach credit to the contradicting facts. If it corroborate what he says, it is strengthened as you may attach credit to the corroborating facts. You will take all this evidence, you will take these rules of law that I have given you, and if, when you have considered the evidence, and found what you believe to be the truth of the case and when you make the application of the principles of the law to that truth, and that result as produced by that action on your part is a result that fastens upon your minds a well-grounded belief that there is guilt, and guilt of murder here as charged, your duty would be to convict, because in such a case as that you as reasonable men outside of the jury-box, as reasonable and just and impartial citizens, looking into the truth or falsity of a charge preferred against another citizen when the proof carried your minds that far, would believe the charge and you would act upon that belief.

481 It is necessary that you should look at every fact in this case in its own light, and in the light of the other facts. First determine if it is true, then see what it establishes. If it tends to establish a proposition in the case it is a material fact, and is to be taken in the light of the other evidence, in the light of the other testimony. This is the rule that the law lays down to enable you to pass upon the credibility of evidence, to pass upon the weight of testimony, to see how much is established by that evidence. Now, the law prescribes the extent to which the proof shall go before a proposition is established. It does not say that any crime, no matter how great it may be, is to be established absolutely beyond question, beyond any possibility of doubt in the case. It does not require that degree of certainty. It only requires that it should be established, as the law says, beyond a reasonable doubt—that is to say, that there is driven out of the case, not every doubt, or any doubt, but every doubt for which a good reason can be given; in other words, if the proof carries the case to that point that you are satisfied as reasonable men to a moral certainty, you have an abiding conviction to a moral certainty of the truth of the charge, your duty would be to find the defendant guilty as charged; but if it is not established to that degree of certainty then it is left in condition of doubt, and left in the condition of that kind of doubt that the law defines as a real substantial doubt of guilt. It is one that you may regard. But if that sort of doubt does not exist, but is driven out of the case, then it is in a condition where the proposition asserted is established.

You recognize the importance of this case; you recognize the
482 importance of having the facts speak the exact truth, and of having made to that truth a correct application of the principles of the law. I submit the case to you. I ask you to take it and find out exactly what the truth is, and then apply the law that is applicable to that truth. If that produces in your minds, beyond a reasonable doubt, a conviction of guilt upon the part of the defendant, or you believe to that degree of certainty he is guilty, then the response is murder. If it leaves the case where it is not proven that the defendant under this law is not guilty, he is entitled to an acquittal at your hands. Then, you will find the exact

truth and apply the law to it, and let your verdict be what the law implies it shall be, a true speech in the case. Take the case and make up your verdict.

483 To which charge the defendant, at the time, offered no objections.

To the subject-matter of which charge, however, the defendant, by his original motion for new trial and by the sixth ground of his amended motion, objected generally, and specially by the seventh, eighth, and ninth grounds for new trial, as set up in his amended motion, as follows, to wit:

Now comes the defendant, Alexander Lewis, and moves the court to set aside the verdict and grant him a new trial under indictment No. —.

First. Because the court erred in its charge and misinstructed the jury upon the law of the case.

Second. Because the verdict of the jury is against the law and the evidence.

Sixth. Because the court erred in its instruction to the jury as to the law of the case.

Seventh. Because the court in defining the status of a party allied to a conspiracy to commit the crime of robbery, and in defining how he may enter into an agreement to commit it, either tacitly or by words, and continue therein and be held responsible for whatever crime grows out of such conspiracy, erred in failing to direct the jury in this case as to how they should find the formation of said conspiracy, and in failing to point out to them that the testimony of an accomplice alone as to the formation of said conspiracy was insufficient, and that there should be other material testimony going to establish the same.

Eighth. Because the court erred in giving the law as to the defense of an alibi by giving undue prominence to the cautionary rules by

484 which they should weigh this class of testimony, and particularly in saying to them that it was a defense often resorted to and often attempted to be sustained and made effective by fraud, subornation, and perjury.

Ninth. Because the court erred in admitting the testimony of J. T. Holliman alias Joe Foster, and in not instructing the jury to disregard the same, the said Holliman having previously been, under the name of Joe Foster, by which he was known at the time, as shown at defendant's trial, jointly indicted with the defendant and others for the murder of Benj. C. Tarver, at the time of the alleged train robbery. And the same indictment being still pending against him in this court when he was used as a witness in this case, he having neither been tried, acquitted, or convicted thereon at the time of the trial and conviction of this defendant.

His objections to said charge were overruled by the court when it passed on the original and amended motion for new trial.

To which ruling the defendant at the time excepted.

Whereupon the jury retired to deliberate, and afterwards returned into court the following verdict:

"We, the jury, find the defendant guilty of murder as charged in the within indictment."

(Signed) GEO. A. BRYANT,
Foreman.

Whereupon the defendant afterwards filed his motion for new trial on the 31st day of October, 1891, and afterwards by leave of court, on Jan. 11th, 1892, filed his amended motion for new trial, which motions were respectively in the following words and figures, to wit:

485 (*Motion for new trial, filed Oct. 31st, 1891.*)

In the circuit court of the Unit ed States, western district of Ark.

UNITED STATES
against
ALEXANDER LEWIS. } Motion for new trial.

Now comes the defendant, Alexander Lewis, and moves the court to set aside the verdict and grant him a new trial under indictment, No.

First. Because the court erred in its charge and misinstructed the jury upon the law of the case.

Second. Because the verdict of the jury is against the law and the evidence.

THOS. H. BARNES,
J. WARREN REED,
Attorneys for Def't.

486 *Amended motion for new trial, filed Jan. 11, 1892.*

In the circuit court of the United State' for the Western district of Arkansas.

THE UNITED STATES, PLAINTIFF,
vs.
ALEXANDER LEWIS, DEFENDANT. } Amended motion for new trial.

The defendant, Alexander Lewis, by way of amendment to his original motion, herein moves the court to set aside the verdict in this cause and grant him a new trial herein for the following reasons:

First. Because there is not sufficient testimony to support said verdict.

Second. Because the said verdict is contrary to the evidence.

Third. Because the verdict is contrary to law.

Fourth. Because of the following newly discovered testimony since his trial:

1st. Of Jeff Moore, whose whereabouts were unknown to the defendant at the time of his trial, by whom he can prove, as shown by his affidavit hereto attached and made a part hereof, marked Exhibit "A," that he was at Wm. Dawson's place near Tulsa, Ind. Ter., on Monday, the 18th of June, 1888, and saw Kelp Queen, Bill Dawson, Jim Johnson, Alexander Lewis, and some other men there playing cards. That soon after his arrival the game closed, and he saw Lewis and Queen get up their horses, and Queen turn over to Lewis a blue-gray horse which Lewis rode home and led another horse. That he went home with Lewis and remained there that night.

2nd. Of Joe Jack, whose whereabouts could not be ascertained at the time of his trial, by whom he can prove, as shown by his affidavit
487 hereto attached and made a part hereof, and marked Exhibit "B," that on the afternoon of June 15th, 1888, about one hour before sunset, he met defendant about three miles east of Tulsa, going towards his home. The affiant's brother, Dolf Jack, was with him when he met defendant. That he was in Tulsa next morning and heard about the train being robbed on the M. K. & T. R. R.

3rd. Of Mrs. Kate Claywell and Bunk Maxfield, her son, by whom he can prove that Tom Claywell, husband of one of the affiants, was arrested at his home and taken to Tulsa on the 15th day of June, 1888, and that the note from Claywell, written in pencil and bearing date 15th of June, 1888, was received by them and never out of their possession until sent to defendant to be used as evidence in his case, and was never altered or changed in any respect. Defendant refers to affidavit of said parties, marked Exhibit "C," and makes the same a part hereof.

4th. Of W. E. Halsell, by whom he can prove, as shown by his affidavit hereto attached and made a part hereof, and marked Exhibit "D;" that he (Halsell) had been extensively engaged for a number of years in handling cattle, and that on the day of the robbery of the train and the killing at Virdegris bridge, near Gibson Station, in June, 1888, he went in company with J. M. Crutchfield, his manager, from his ranch to Tulsa, where on said day he met and conversed with defendant. Also that Deputy Marshal Isabel arrested Tom Claywell on said day and brought him to Tulsa, thence to Vinita by rail, and that he traveled on the same train with them from Tulsa to Vinita on said day. That he heard of the said train robbery and killing of one of the passengers for the first time on the next day after he reached home at Vinita.

488 5th. Of R. M. Bynum, by whom he can prove, as shown by his affidavit hereto attached and made a part hereof and marked Exhibit "E," that he was engaged in the mercantile business in Tulsa, I. T., in June, 1888. That he knew defendant, who had an account with him at the time. That he remembers that defendant bought a guage wheel in person from his store, and that the charge and date upon his book of June 15th, 1888, is correct. That he also remembers loaning Thomas Claywell the sum of $25.00 while he was at Tulsa a prisoner on said day. Also that Claywell told him to go to his place and get some cattle, but when he went after the cattle he found a note to Claywell's family written the same day, saying not to let some of the cattle go.

That the money was borrowed with the understanding that he was to get the cattle; that the charge on his book shows that the loan was made June 15th, 1888; that Claywell's account was continued in his name by his family, and that the goods charged to him soon after the 15th were gotten by his family, and that the goods were not sold to him in person until he gave bond and returned to Tulsa some *tim* time after.

6th. By Daniel Drew and Lee Myers he can prove that about noon on the 16th day of June, 1888, between the points where Louis McHenry and Lydia Cox testify to having met five mounted men, supposed to be the train robbers and murderers, on said day going from the direction of Virdegris R. R. bridge to Wingo Creek they met the same five men; that they were well acquainted with the defendant and know he was not of the

party. Defendant states that said witnesses are citizens of excellent standing in the Indian country, have signified their willingness to
489 make affidavits to the above facts, and through his friends he has applied to W. P. Moore, notary public, and he has promised to go to their residences and take said affidavits, but up to this time defendant has not received them.

Defendant states that he had been confined in jail for a number of months previous to his trial and could not by reasonable diligence have discovered and obtained the above-named testimony at his former trial.

Fifth. Because defendant was surprised by the production of the testimony of Deputy Marshal L. P. Isabel, who was telegraphed for and brought from Vinita, I. T., as a witness against him in the progress of the trial without notice to him, and without endorsement as a witness upon the indictment as required by law.

And defendant also relies upon the testimony as shown in the accompanying affidavits of Mrs. Kate Claywell-Bunk Maxfield, W. E. Halsell, and R. M. Bynum, to show that the testimony of said Isabel as to the date of the arrest and carrying of Thomas Claywell to and from Tulsa and as to the time and place when and where, and Halsell learned of the said robbery and killing at Virdegris Bridge in June, 1888, is not true. And defendant states that he could not by reasonable diligence have anticipated and met said testimony.

Sixth. Because the court erred in its instructions to the jury, as to the law of the case.

Seventh. Because the court in defining the status of a party allied to a conspiracy to commit the crime of robbery, and in defining how he may enter into an agreement to commit it, either tacitly or by words,
490 and continue therein and be held responsible for whatever crime grows out of such conspiracy, erred in this case, as to how they should find the formation of said conspiracy, and in failing to point out to them that the testimony of an accomplice alone, as to the formation of said conspiracy was insufficient, and that there should be other material testimony going to establish the same.

Eighth. Because the court erred in giving the law as to the defense of an alibi, by giving undue prominence to the cautionary rules by which they should weigh this class of testimony, and particularly in saying to them that it was a defense often resorted to and often attempted to be sustained, and made effective, by fraud, subornation and perjury.

Ninth. Because the court erred in admitting the testimony of J. T. Holliman, alias Joe Foster, and in not instructing the jury to disregard the same, the said Holliman having previously been, under the name of Joe Foster, by which he was known at the time, as shown at defendant's trial, jointly indicted with the defendant and others for the murder of Benj. C. Tarver at the time of the alleged train robbery. And the same indictment being still pending against him in this court when he was used as a witness in this case, he having neither been tried, acquitted, or convicted thereon at the time of the trial and conviction of this defendant.

ALEXANDER LEWIS.

Subscribed and sworn to before me by Alexander Lewis, this January, 7th, 1892.

STEPHEN WHEELER, *Clerk.*

491 EXHIBIT "A."

The affiant, Jeff Moore, being duly sworn, states:

I was at Wm. Dawson's place near Tulsa, Ind. Ter., on Monday, 18th day of June, 1888, and found Kelp Queen, Bill Dawson, Jim Johnson, Alex Lewis, and some other men there playing cards. Soon after my arrival the game closed. I saw Lewis and Queen get up their horses, and Queen turned over to Lewis a blue horse which Lewis rode home and led another horse. I went home with Lewis and stayed that night. And further affiant sayeth not.

JEFF MOORE.

Subscribed and sworn to before me by Jeff Moore, this 21st day of December, 1891.

[SEAL.] FRED METZNER,
Notary Public.

My commission expires Dec. 12th, 1895.

492 EXHIBIT "B."

The affidavit, of Joe Jack, being duly sworn, states: I live at Tulsa, I. T., and know Alexander Lewis. On the evening of June 15th, 1888, about one hour before sundown I met Alexander Lewis about 3 miles east of Tulsa, I. T., going towards his home.

My brother Dolf Jack was with me when we met Mr. Lewis. I was in Tulsa the next morning and heard about the train being robbed on the M. K. & T. R. R.

his
JOE X JACK.
mark

Subscribed and sworn to before me this 28th day of Dec., 1891.

[SEAL.] W. P. MOORE,
Notary Public.

493 EXHIBIT "C."

The affiants, Mrs. Kate Claywell, and Bunk Maxfield, her son, being duly sworn, state that Tom Claywell, husband of one of the affiants, was arrested upon a charge of larceny at his home, about six miles from Tulsa, I. T., and was taken to said place on the fifteenth day of June, 1888, and, after reaching there, sent a note home, written in pencil, on a certain business matter, bearing said date; and that said note was sent by us to Alexander Lewis, at Fort Smith, to be used as evidence in his case, to show the date when Claywell was taken to Tulsa. We further state that said note was never altered in any way by us and was never out of our possession until it was sent to said Lewis.

And further affiants say not.

KATE CLAYWELL.
BUNK MAXFIELD.

Subscribed and sworn to before me by Kate Claywell and Bunk Maxfield this 16th day of December, 1891.

[SEAL.] W. P. MOORE,
Notary Public.

494 EXHIBIT D.

The affiant, W. E. Halsell, being duly sworn, states: I am a citizen of Vinita, Ind. Ter. My principal occupation for a number of years has been that of raising, buying, and selling cattle. On the day of the robbery of the train at Verdigris Bridge, near Gibson Station, Ind. Ter., in June, 1888, I went, in company with J. M. Crutchfield, then my manager, from my ranch to Tulsa, where, upon said day, I met and conversed with Alexander Lewis, now under conviction at Fort Smith, Ark., for murder at the time of said train robbery. My recollection is that Deputy Marshal Isabel arrested Tom Claywell on that day and brought him to Tulsa, thence to Vinita by rail, and that I traveled on the same train with them from Tulsa to Vinita on said day.

I heard of said train robbery and killing of one of the passengers for the first time on the next day after I reached home.

I was subpœnaed for said Lewis, but, being detained by important business, was not present at his trial.

And further affiant sayeth not.

W. E. HALSELL.

Subscribed and sworn to before me by W. E. Halsell this 28th day of Dec., 1891.

[SEAL.] F. M. SMITH,
Notary Public.

My commission expires Oct. 22nd, 1895.

495 EXHIBIT E.

The affiant, R. N. Bynum, being duly sworn, states: I was in the mercantile business at Tulsa, Ind. Ter., in June, 1888. I know Alexander Lewis. He had an account with me at the time stated. I remember that he got a *guage* wheel from my store and that the charge and date is correct, of June 15th, 1888.

I remember also lending Thomas Claywell the sum of twenty-five dollars while he was at Tulsa a prisoner on said day; also that he told me to go to his place and get some cattle, but when I went after the cattle I found a note to his family written the same day saying not to let some of the cattle go.

The money was borrowed with the understanding that I was to get the cattle. The charge shows the loan was made June 15th, 1888.

Claywell's account was continued in his name by his family, and goods charged him soon after the 15th were gotten by his family.

And the goods were not sold to him in person until he gave bond and returned to Tulsa some time afterwards.

R. N. BYNUM.

Subscribed and sworn to before me by R. N. Bynum this 17th day of Dec., 1891.

[SEAL.] W. P. MOORE,
Notary Public.

And after argument by counsel said motions were by the court overruled and the defendant at the time by his counsel excepted.

The court, at the time of passing on the motions for new trial, said:

496 UNITED STATES
v.
ALEXANDER LEWIS. } Murder.

Ruling of court on motion for a new trial, January 21st, 1892.

PARKER, J.: Taking the causes for a new trial in this case in reverse order, the 9th cause is: "Because the court erred in admitting the testimony of Holloman, alias Joe Foster, and in not instructing the jury to disregard the same, said Holloman having previously been under the name of Joe Foster, by which he was known at the time, as shown at defendant's trial, jointly indicted with the defendant and others for the murder of Tarver at the time of the alleged train robbery, the same indictment still being pending against him in this court, he having never been either tried, acquitted, or convicted thereof, at the time of the trial and conviction of this defendant." The first objection to this cause as a reason for a new trial is that the offering of Holloman as a witness was not objected to by the defendant at the trial, nor did he save any exception to the admission of the witness. The record does not disclose that he did. That really does away with that cause, but outside of that there is another objection to it and it is that it is not material that the case pending against Holloman on an indictment for murder should have been dismissed before he gave his testimony. The dismissal of the indictment
497 against him before he gave his evidence was a right he could claim, if any one could, but he did not have the right to ask for a dismissal. It is a matter that is entirely in the discretion of the Government. This doctrine seems to be established, according to my opinion of it, in the case of The U. S. v. Ford, or in the cases that are sometimes called the "Whiskey cases," reported in 99 U. S., 594, in which the doctrine is that the fact that he gives the evidence, and gives it honestly and impartially, or apparently so, and in a proper way, are things that may be taken into consideration by the Government by recommending clemency for him, but the whole effect of this decision is against the theory that that is to be done as a preliminary proposition, and the decision contains a full review of the authorities upon the subject.

"Certain ancient statutory regulations, as already remarked, gave unconditional promise to accomplices of pardon and complete exemption from punishment, and in such cases it was always held that the accomplice, if he was called and examined for the prosecution, was entitled as of right to a pardon, provided he acted in good faith, and testified fully and fairly to the whole truth." But if he was entitled to a pardon for doing that, it could not be ascertained, of course, whether he was entitled to one until he gave his evidence. The pardon must come afterwards; it is a matter, of course, dependent on the way he conducts himself. "Instances of the kind are adverted to by Mr. Phillips in his valuable treatise on evidence; but he, like the preceding text-writer, states that accomplices, when admitted as witnesses, under the more modern usage and practice of the

courts, have only an equitable title to be recommended to mercy,
498 on a strict and ample performance, to the satisfaction of the presiding judge, of the conditions on which they are admitted to testify that such an equitable title can not be pleaded in bar, nor in any manner be set up as a defense to an indictment charging them with the same offence, though it may be made the ground of a motion for putting off their trial in order to allow time for an application to the pardoning power.

"Offenders of the kind are not admitted to testify as of course, and sufficient authority exists for saying that in the practice of the English court it is usual that a motion to the court is made for the purpose, and that the court, in view of all the circumstances, will admit or disallow the evidence as will best promote the ends of public justice.

"Good reasons exist to suppose that the same course is pursued in the courts of some of the States, where the English practice seems to have been adopted without much modification.

"Such offenders everywhere are competent witnesses if they see fit voluntarily to appear and testify, but the course of proceeding in the courts of many of the States is quite different from that just described, the rule being that the court will not advise the Attorney-General how he shall conduct a criminal prosecution. Consequently it is regarded as the province of the public prosecutor, and not of the court, to determine whether or not an accomplice, who is willing to criminate himself and his associates in guilt, shall be called and examined for the State.

"Of all others the prosecutor is best qualified to determine that question, as he alone is supposed to know what other evidence can be adduced to prove the criminal charge. Applications of the kind are not always
499 to be granted, and in order to acquire the information necessary to determine the question, the public prosecutor will grant the accomplice an interview, with the understanding that any communications he may make to the prosecutor will be strictly confidential. Interviews for the purpose mentioned are for mutual explanation, and do not absolutely commit either party; but if the accomplice is subsequently called and examined, he is equally entitled to a recommendation for executive clemency." That implies, of course, that it is not necessary that the case shall be dismissed against him before he testifies. It is a right that belongs to him, if right at all. It is only an equitable right that belongs to him depending upon how he conducts himself. "Promise of pardon is never given in such an interview, nor any inducement held out beyond what the beforementioned practice of the courts allow.

"Prosecutors in such a case should explain to the accomplice that he is not obliged to criminate himself, and inform him just what he may reasonably expect in case he acts in good faith and testifies fully and fairly as to his own acts in the case and those of his associates." Inform him what he may expect, provided he testifies. He is to testify first. "When he fulfil's these conditions he is equitably entitled to a pardon, and the prosecutor and the court, if need be, when fully informed of the facts, will join in such a recommendation.

"Modifications of the practice doubtless exist in jurisdiction where the power of pardon does not exist prior to conviction, but every embarrassment of that sort may be removed by the prosecutor, as in the

absence of any legislative prohibition he may nol. pros. the indict-
500 ment if pending, or advise the prisoner to plead guilty, he, the prisoner, reserving the right to retract his plea and plead over to the merits if his application for pardon shall be unsuccessful.

"Where the power of pardon exists before conviction as well as after, no such difficulties can arise, as the prisoner, if an attempt is made to put him to trial in spite of his equitable right to pardon, may move that the trial be postponed, and may support his motion by his own affidavit, when the court may properly insist to be informed of all the circumstances. Power under such circumstances is vested in the court, in a proper case, to put off the trial as long as may be necessary, in order that the case of the prisoner may be presented to the executive for decision." That is, the case of the prisoner may be put off.

"Centuries have elapsed since the judicial usage referred to was substituted for the ancient practice of approvement, and experience shows that throughout that whole period it has proved, both here and in the country where it had its origin, to be a proper and satisfactory protection to the accomplice in all cases where he acts in good faith and testifies fairly and fully to the whole truth. Cases undoubtedly have arisen where the accomplice, having refused to comply with the conditions annexed to his equitable right, has been subsequently tried and convicted, it being first determined that he has forfeited his equitable title to protection by his bad faith and false representations. Such offenders, if they make a full disclosure of all matters within their knowledge in favor of the prosecution, will not be subjected to punishment; but if they refuse to testify, or testify falsely, they are to be tried, and may be convicted upon their
501 own confession.

"Nothing of weight by the way of judicial authority can be invoked in opposition to the views here expressed, as is evident from the brief filed by the defendants, which exhibits proof of research and diligence. Decided cases may be cited which contain unguarded expressions, of which the following are striking examples: . . . . ."

That doctrine seems to settle the practice. There is no right in the hands of an accomplice by which he can demand that a case be dismissed against him before he testify. I do not think that position is well taken.

The next objection is, "Because the court in defining

I do not know that I can turn to the part of the charge in this case upon this subject. It is sufficient to say, without reading it, that the court charged fully upon this doctrine as to what extent the testimony of an accomplice must be corroborated, I think, more fully and elaborately than will be found anywhere upon that subject. The jury were told, substantially, that an accomplice must be corroborated as to certain material facts, and these material facts must be facts that tend to show the identity of the defendant as a participant in this crime. A part of his participation in the crime was engaging in a conspiracy. That was one of the elements necessary to ally him to the crime. What conspiracy is was
502 also fully defined, and how it may be proven; that it was a secret thing entered into by the parties, who were acting in secret as a

rule, and that it must be proven, consequently, to a great extent by circumstantial evidence; and, I think, taking the two propositions together, as they were given to the jury, that there is no ground for error in that part of the charge. It is sufficient to say, as remarked in the case of Busby, that no exceptions were saved to this charge at all, and the court might rest upon that proposition without saying anything further.

It is claimed again that the court erred in its charge in relation to what is an alibi, and that the charge seemed to dwell with too much precision upon this part of the case. There is one thing that may be remembered with profit, I think, at this bar: That Federal courts, according to all the decisions, have the right to go even to the extent of commenting on the weight of the evidence, and it is usually practiced among Federal judges, who take up each item of the evidence and tell the jury what it is worth and how much weight is to be attached to it. This court never does that. It lays down general propositions bearing on particular parts of the case, and when taken together they make up the law of the case, and it undertakes to lay down propositions bearing upon the law of the case, but it does not comment on the weight of the testimony. It gives the jury rules by which they may weigh it, leaving them to determine the weight to attach to it. Therefore, it seems to me that if the principle is a correct one it can not be alleged as error. It could not be even if the court went so far as to select from the balance of it the testimony that bore upon
503 a particular point and told the jury what that was worth. The books are full of cases where this is done by Federal judges. It is regarded as somewhat arbitrary by some people. This court never follows that practice. I think the jury ought to have all the rules necessary that are prescribed by the law to enable them to weigh it correctly. It is well enough that we look at this part of the charge to see what the court did say. It certainly contains no comment on the evidence.

"The defense in this case is that the defendant, Alexander Lewis, was not a party to the crime of the killing of Benjamin C. Tarver, and he offers evidence to show that he was not present and did not participate in the killing of Tarver, because it was impossible for the reason that at the time of the killing he was elsewhere. This in the law is called the defense of alibi, or an "alibi." That is, that the accused at the time of the killing was elsewhere, and could not then and there have taken part in taking the life of Benjamin C. Tarver, because of his being elsewhere, and therefore it was a physical impossibility on his part. One of the material averments in an indictment, and one which must be proved by the Government beyond a reasonable doubt is that the accused then and there, that is, at the time and place of the killing, took the life of Benjamin C. Tarver. This defense of an alibi is wholly inconsistent with the allegation in the indictment that the defendant then and there killed Benjamin C. Tarver, and the law says, this defense is of all others the most decisive when duly substantiated or established; yet it is an easy defense to fabricate, and the most difficult to be disproved. An alibi that is not circumstanced
504 as proof amounts to but little. Its value depends upon the way it is circumstanced; that is the witness or witnesses must be able to give you a detailed statement of such circumstances as to lead you to believe it is true, and that the defendant could not have been at the place of the killing at the time of the killing, and participated in it.

A witness may be able to give you a set of circumstances which may have occurred, which may be true in every respect, and the falsehood may be only in applying them either purposely, or by mistake, to a different time or date or hour than that in which they occurred, and if this is done by mistake it constitutes a failure of the facts as proving facts, and if it is done wilfully it is a contrivance by which pleas of alibi are made very difficult to disprove and so easy to fabricate. Because this is true, and because of the liability of witnesses to honest mistakes as to times or dates when things occur, and because it is so easy to fabricate a defense of this kind, a defense of that nature is often resorted to and is often attempted to be sustained and made effective by fraud, subornation, and perjury. Because a defense of this nature can with comparative ease be made effective by means of fraud, perjury, and falsehood, and the ease with which defenses of this kind can be fabricated, the proof offered to sustain an alibi must be submitted by you to a rigid scrutiny. In considering the strength of evidence necessary to sustain the defense of alibi it is obvious that all the testimony tending to show that the accused was in another place at the time of the killing of Benjamin C. Tarver is in direct conflict with that which tends to prove that he was at the place where the crime was
505 committed at the time it was committed and actually assisted in its commission. In this conflict of evidence whatever tends to support the one, tends in the same degree to rebut and overthrow the other, and it is for you to decide where the truth lies."

That was the charge upon that subject, and that certainly is the law as to that character of defense. It is a fact that is so prominent that it may be taken notice of by the court that it is a defense that is often fabricated because of the case with which it can be resorted to, and there is no jurisdiction where that is as true as it is here, and I apprehend there is nothing wrong in a judge telling a jury the truth of the matter, or giving them the law which defines the state of case that must exist before the truth is established. It is a defense that is often resorted to and is often supported by fraud and perjury, and supported, too, by witnesses coming from a country where perjury is at a premium. If juries are to have no admonition as to the character of defenses that are set up, if they are not to have the law at all, and that witnesses who come in to support an alibi are to be believed simply because they assert a fact, of course the administration of justice becomes a failure.

Various causes for a new trial are set up in this motion, and one is that the defendant was taken by surprise by the introduction of Mr. Isabell as a witness. In legal parlance this can not be correct, for the defendant had evidence here, and introduced it on the trial, relating to the same subject-matter about which Isabell testified. In fact, Isabell was a witness to what other evidence offered by the defendant related, to the date of the arrest of one Claywell by Isabell, the fact that it was done on a cer-
506 tain day. The fact of the defendant offering other witness to show that fact, and the fact that Claywell was arrested by Isabell, discloses the proposition, if his side of the case was true, that he was a material witness on that side of the case, and that is not what is meant by taking by surprise at all. This was used by the defendant as a fact, as a means of showing that the defendant at that time was at a place that made it impossible for him to have been at the robbery of the train and the

murder of Benjamin C. Tarver, and defendant could not be taken unawares by the introduction of Isabell in rebuttal, as when he went into the subject of the arrest of Claywell he must have had reason to anticipate that the Government would call the officer who made the arrest to know what the truth was. If a party has any reason to anticipate the testimony of witnesses he is not taken by surprise by the introduction of the witnesses. Taking by surprise means something that could not be reasonably anticipated, that situation in which a party is placed without any fault of his own. The situation in which he was placed was not unexpected, because it was just such a one that he might anticipate, and therefore the defendant could with reason have anticipated the testimony of Isabell.

It is further complained that the name of Isabell was not entered on the indictment. Section 1033 of the statute provides that witnesses to sustain an indictment shall be put on the indictment, together with their place of residence.

"When any person is indicted of treason, a copy of the indictment and a list of the jury and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and
507 witness, shall be delivered to him at least three entire days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial."

I am not aware that this section has received any reported construction. What does it mean? Does it mean that the Government can not, under any circumstances, use a witness unless the defendant has had notice served on him two entire days before the trial? How could the Government in this case say before the trial that Isabell would be a relevant witness? He was not a relevant witness until he was made so by the action of the defendant. His testimony was not pertinent until that time. Then must the defendant have two days' notice of any such witness as he can make a material witness by the state of case that he may establish, or attempt to establish, by the evidence offered by him after the trial commenced? When such a witness is called for the purpose of rebutting evidence offered by him, called upon the part of the Government, the Government could not give him notice of the witness. It could not anticipate, because the testimony of Isabell, outside of the testimony of the defendant, had nothing to do with the case. This would defeat the administration of justice, because no matter how false the defense the Government could never refute it. Even stopping the trial for two days that notice might be given would not avail, as the law says that notice must be two days before the trial commenced. The law is not made to aid criminals in escaping justice. No objection was offered to the introduction of Isabell, and no exception was taken to his admission as
508 a witness. This, without anything else, would render that objection nugatory.

The defendant sets up certain 'itnesses who know certain facts and will testify to them if permitted to do so. Among them is Mr. Bynum, a merchant of Tulsa. The whole subject-matter of what he could prove by him was before the jury by the evidence of another witness. The de-

fendant knew of the materiality of this evidence before the trial. He knew the residence of the witn'ss. He shows no diligence to have Bynum here at the trial, and the same may be said with reference to M. Halsy and his evidence, except about what he would testify was before the jury as coming from other witnesses. The defendant knew where he lived; he had him subpœnaed, and he had an opportunity before his trial to ascertain exactly what he would testify to. The law lays down the principle as to what diligence shall be used in order to give a party the right to claim that he must have his case tried over because of the absence of witnesses.

"A party who seeks for a new trial on the ground of newly discovered evidence is chargeable with laches if previous to the trial he knew that the witness whose testimony he seeks to introduce as newly discovered must, probably from his occupation and employment at the time of the transaction, the subject of the controversy, be conversant with the facts in regard to the transaction, and especially where, previous to the trial, the party knew, as the witness himself testifies to what the witness could prove, although at the time of the trial, and while preparing therefor, the party had forgotten the facts. It is not such newly discovered evidence
that the party applying for a new trial could not procure in time
509 the witness whom he seeks to introduce as will entitle him to a new trial. He should have applied to the court for a postponement; and if he has gone to the trial without the testimony a new trial will not be granted for the purpose of letting in such evidence. Nor is the absence of a witness who had not been subpœnaed a good cause for granting a new trial; but it seems that the sudden illness of a witness is." (Sec. 3350, Wharton on Crim. Law, Vol. 3.)

And, again:

"After-discovered evidence, in order to afford a proper ground for the granting of a new trial, must possess the following qualifications:

It must have been discovered since the former trial.

It must be such as reasonable diligence on the part of the defendant could not have secured at the former trial.

It must be material in its object, and not merely cummulative and corroborative, or collateral." (Wharton on Crim. Law., sec. 3334, Vol. 3.)

The defendant had before the jury the subject-matter which he says he can prove by Mrs. Kate Claywell, and Burke Mayfield. The defendant knew where they lived, and had reasonable opportunity of knowing before the trial what he could prove by them. Therefore, there is no diligence shown in getting them. And what has been said applies to what is set out in the motion in regard to the parties Daniel Drew and Lee Myers. I am not able to find that due diligence has been used to ascertain the existence of this evidence before the trial. The evidence must be such as
reasonable diligence on the part of the defendant could not have
510 secured it at the former trial. And, besides, there is no statement made under oath as to what these witnesses will testify to. In his motion the defendant, in regard to Jeff More, does not show that any effort was made to know the whereabouts of Jeff Moore before this trial. If Moore was at Dawson's place at the time named defendant knew it, and he must have known he was a material witness, and yet he makes no effort to get him. Mr. Moore does not say where he lived at the time of

the trial or where he lives now, nor does the defendant disclose that fact. The evidence of Moore is not newly discovered evidence, because if the defendant had reasonable ground to know of him as a witness his evidence is not newly discovered, according to the contemplation of the law as to what that kind of evidence is.

The defendant was indicted in February, 1891, and tried in October, 1891, the verdict being rendered on the 15th of that month. The case was continued at the regular May term, upon the part of the Government, when the defendant was understood to be ready for trial.

Without taking up further time upon this motion, I do not think it shows sufficient grounds for a new trial, and it will therefore be overruled.

Mr. BARNES (of counsel for defendant). I wish to save an exception to the ruling on the motion for a new trial.

511 Whereupon the court pronounced the sentence of death upon the said defendant, which sentence is as follows, to wit:

512 In the district court of the United States for the western district of Arkansas. November term, 1891.

THURSDAY MORNING, 9 O'CLOCK, *January 21st*, 1892.

Court met pursuant to adjournment. Present, the Honorable I. C. Parker, judge of the district court of the United States for the western district of Arkansas.

UNITED STATES
vs.
ALEXANDER LEWIS. } Indictment for murder No. 15.

On motion of Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, the said defendant, Alexander Lewis, was brought to the bar of the court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty, heretofore returned against him by the jury in this cause, on the 26 day of October, 1891, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon the premises being seen, and by the court well and sufficiently understood, it is considered by the court that the said marshal of the district aforesaid, cause the said Alexander Lewis to be taken hence, and him, the said Alexander Lewis, safely and securely keep, from the date hereof, until Wednesday, the 27 day of April, A. D. 1892, and on that day and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal, cause the said Alexander Lewis to be taken to some convenient place within this district, to be appointed by said marshal, and then and there, between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon, on Wednesday, the said day of April, in the year of our Lord one thousand, eight hundred and ninety-two, cause the said Alexander Lewis to be hanged by the neck until he is dead.

And it is further considered by the court, that the United States of America do have and recover all their costs in and about this prosecution laid out and expended and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal, with a full and true account of the execution of the same.

513 To which judgment and sentence of the court the defendant at the time excepted, and was granted until day of February, 1892, to prepare and file a bill of exceptions, which the defendant here tenders and prayes that the same may be signed, sealed, and made a part of the record in this cause, which is accordingly done.

Jan. 30, 1892.

(Signed)

I. C. PARKER,
U. S. District Judge, presiding in the circuit court at the time it tried the above-entitled cause.

514 In the circuit court of the United States, for the western district of Arkansas. November term, A. D. 1891.

THE UNITED STATES, PLAINTIFF,
vs.
ALEXANDER LEWIS, DEFENDANT. } Murder.

To the clerk of the circuit court of the United States for the western district of Arkansas.

Your petitioner respectfully represents that at the August term, A. D. 1891, of this court, he was convicted on the indictment charging him with the crime of murder, and that the said court has pronounced judgment and sentence of death upon this petitioner on the verdict of the jury convicting him as aforesaid.

Your petitioner alleges that in the record and proceedings in the trial in said cause there is great and manifest error, to the prejudice and great damage of your petitioner.

He therefore prays that a writ of error from the Supreme Court of the United States be issued by you under the seal of said circuit court in said cause, removing the said cause, and the record therein to the said Supreme Court, in order that the same may be there re-examined, and if error be found that the judgment and sentence against him therein may be reversed.

ALEXANDER LEWIS.
By BARNES & REED,
His attorneys.

515 In the circuit court of the United States for the western district of Arkansas. November term, A. D. 1891.

THE UNITED STATES, PLAINTIFF,
vs.
ALEXANDER LEWIS, DEFENDANT. } Murder.

The defendant in the above-entitled cause, Alexander Lewis, files this, his assignment of errors, committed on the trial of said cause, to wit:

1. It was error for the court to direct two lists of thirty-seven qualified jurymen to be made out by the clerk, and one given to the district at-

torney and one to the counsel for the defendant, and for the court to direct each to proceed with its challenges independent of the other, and without knowledge on the part of either as to what challenges had been made by the other, by which method of proceeding defendant challenged three jurors, to wit: James H. Hamilton, Britton Upchurch, and James P. Mack, who had also been challenged by the Government (as appears from the two lists of jurors used by the Government in making its challenges, and the defendant in making his challenge), and for the court to direct the jury to be called from the said two lists, impanelled and sworn.

Whereby defendant lost the right to three challenges. The challenge to each juror should first have been made by the Government, and then by the defendant. The Government should have been required to
516 exhaust her challenges to each particular juror, and then to pass the juror to the defendant for challenge or acceptance.

2. It was error for the court to admit the testimony of J. T. Holloman, alias Joe Foster, and to not instruct the jury to disregard the same after it was admitted. The said Holloman having been under the name of Joe Foster, by which he was known at the time, as shown at defendant's trial, jointly indicted with the defendant and others for the murder of Benjamin C. Tarver, at the time of the alleged train robbery, and the same indictment as also shown being still pending against him in this court when he was used as a witness in this case, he having neither been tried, acquitted, or convicted thereon, at the time of the trial and conviction of this defendant.

3. It was error for the court to admit the testimony of Deputy Marshal L. P. Isabel, who was telegraphed for and brought from Vinita, Indian Territory, as a witness against defendant in the progress of the trial, without notice to him, and without indorsement upon the indictment of the name of said witness previously, as required by law, he having no reasonable opportunity to meet his testimony by testimony in addition to what he had produced upon a material point, as to the date of certain occurrences going to establish his alibi, which he could have done, if proper notice of the purpose to use said witness as aforesaid had been given, as shown by the affidavits of Mrs. Kate Claywell, Bunk Maxfield, W. E. Halsell, and R. M. Bynum, filed as a part of defendant's motion for new trial.

4. It was error for the court in defining the status of a party
517 allied to a conspiracy to commit the crime of robbery, and in defining how he may enter into an agreement to commit said crime, either tacitly or by words, and continue therein and be held responsible for whatever crime grows out of said conspiracy, to fail to direct the jury in this case as to how they should find the formation of said conspiracy, and to fail to point out to them that the testimony of an accomplice alone, as to the formation of said conspiracy, was insufficient, and that there should be other material testimony going to establish the same.

This will fully appear by an examination of the whole charge presented in the bill of exceptions.

5. It was error for the court, in giving the law as to the defense of an alibi, to give undue prominence to the cautionary rules by which they should weigh this class of testimony, and particulary to say to them that it was a defense often resorted to, and often attempted to be sustained and made effective, by fraud, subornation, and perjury.

This will also appear by an examination of this part of the charge and by an examination of the testimony of the witnesses upon the alibi, and of the written documents and book entries going to sustain the testimony of a number of disinterested witnesses, in regard to whose testimony no fraud, subornation, or perjury could properly be claimed.

6. It was error for the court to overrule the original and amended motions for a new trial and to sentence the defendant.

Wherefore, the above stated errors considered, the said defendant prays that the judgment and sentence against him be reversed.

ALEXANDER LEWIS,
By BARNES & REED,
His Attorneys.

518 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Wm. H. H. C'ayton, esq., U. S. dist. attorney for the western dist. of Arkansas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the western dist. of Arkansas, wherein Alexander Lewis is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Isaac C. Parker, judge of the dist. court of the United States, this 30 day of January, in the year of our Lord one thousand eight hundred and ninety-two.

ISAAC C. PARKER,
U. S. Dist. Judge, Presiding Judge of the Circuit Court.

519 On this 30 day of Janu'y, in the year of our Lord one thousand eight hundred and ninety-two, personally appeared before me, the subscriber, and makes oath that he delivered a true copy of the within citation to .

Sworn to and subscribed the A. D. 18 .

I hereby accept service of the within citation.

WM. H. H. CLAYTON,
U. S. Atty. West. Dist. Ark.

Feb. 1st, 1892.

520 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, you, between the United States of America and Alexander Lewis, a manifest error hath happened, to the great damage of the said Alexander Lewis as